THE PARENTAL AND MEDICAL LEAVE ACT OF 1986

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON
LABOR-MANAGEMENT RELATIONS

AND THE

SUBCOMMITTEE ON LABOR STANDARDS

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, APRIL 22, 1986

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CONTENTS

Page

Hearing held in Washington, DC, on April 22, 1986 1

Statement of:
  - Donahue, Thomas, secretary-treasurer, AFL-CIO 11
  - Elliot, Iris, Chesterfield, MO, and Frances Wright, Virginia Beach, VA 4
  - Kardos, Jeanne, director of employee benefits, Southern New England Telephone; Barbara Inkellis, general counsel, Disclosure Information Group, Irma Finn Brosseau, executive director, Business and Professional Women's Foundation; and Susan Hager, president, Hager, Sharp & Abramson, Inc., representing the U.S. Chamber of Commerce 51
  - Szanton, Eleanor S., Ph.D., executive director, National Center for Clinical Infant Programs; Meryl Frank, director, infant care leave project, Yale Bush Center in Child Development and Social Policy; Irene Natividad, national chairwoman, National Women's Political Caucus; and Bonnie Milstein, cochair, Civil Rights Task Force, Consortium of Citizens with Developmental Disabilities 25

Prepared statements, letters, supplemental materials, et cetera:
  - American Federation of State, County and Municipal Employees, prepared statement of 82
  - Biller, Moe, general president, American Postal Workers Union, AFL-CIO, letter to Hon. William Clay, dated May 20, 1986 132
  - Brosseau, Irma Finn, prepared statement 59
  - Donahue, Thomas R., secretary-treasurer, AFL-CIO:
    - Letter to Hon. William L. Clay, dated May 28, 1986 80
    - Prepared statement of 14
  - Easterling, Barbara J., prepared statement on behalf of the Communications Workers of America 88
  - Economic Policy Council, United Nations Association of the United States of America, prepared statement of 93
  - Elliot, Iris, prepared statement of 5
  - Families for Private Adoption, Washington, DC, statement dated March 25, 1986 138
  - Frank, Meryl, director, infant care leave project, Yale Bush Center in Child Development and Social Policy, prepared statement of 31
  - Hager, Susan, prepared statement on behalf of the Chamber of Commerce of the United States 63
  - Inkellis, Barbara G., general counsel, Disclosure Information Group, prepared statement of 57
  - Jacobson, Richard L., letter to Hon. William L. Clay, dated April 24, 1986. 146
  - Kardos, Jeanne F., prepared statement of 53
  - Krause, George M., acting commissioner, New Jersey Department of Labor, written testimony submitted by 140
  - Lawton, Bettina, letter to Hon. William L. Clay, dated May 6, 1986 149
  - Meiers, Margaret, letter to Fred Feinstein, dated May 14, 1986, enclosing a report entitled "Report on a National Study of Parental Leaves" 150
  - Milstein, Bonnie, prepared statement on behalf of the American Association on Mental Deficiency, et al 45
  - Natividad, Irene, national chair, National Women's Political Caucus, prepared statement of 34
  - Sombrotto, Vincent R., president, National Association of Letter Carriers, prepared statement of 134
  - Swain, Frank S., chief counsel for advocacy, Small Business Administration, letter to Hon. Augustus F. Hawkins, dated April 21, 1986 70

Prepared statements, letters, supplemental materials, et cetera—Continued
Page
Szanton, Eleanor Stokes, Ph.D., prepared statement on behalf of the National Center for Clinical Infant Programs 27
Warden, Dick, letter to Hon. William L. Clay, dated March 18, 1986 87
Women's Legal Defense Fund, prepared statement of 99
"Work & Family, A Changing Dynamic," report entitled 229
Wright, Frances, prepared statement of 8

THE PARENTAL AND MEDICAL LEAVE ACT OF 1986

TUESDAY, APRIL 22, 1986

House of Representatives,
Subcommittee on Labor-Management
Relations and Subcommittee on Labor Standards,
Committee on Education and Labor,
Washington, DC.

The joint committee met, pursuant to call, at 10 a.m., in room 2261, Rayburn House Office Building, Hon. William T. Clay (chairman of the Subcommittee on Labor-Management Relations) presiding.

Members present from the Subcommittee on Labor-Management Relations: Representatives Clay, Hayes, Roukema, Bartlett, and Fawell.

Members present from the Subcommittee on Labor Standards: Representatives Murphy, Clay, and Bartlett.

Mr. Clay. The committee will come to order.

Today we are considering H.R. 4300, the Parental and Medical Leave Act of 1986. This bill deals with two important phenomena occurring in American society, the changing nature of our workforce and the simultaneous changes that have been occurring in our families.

Clearly, there is a problem. The high rate of divorce, the dramatic increase in households headed by a single parent, the desperate need for child care, each of these has been affected by larger changes occurring in the work place.

The families that many of us grew up in during the 1950's and 1960's, where everyone had two parents and only one of them worked, does not exist for most families today.

Women are now a majority in the workforce and almost half of all women with children under 1 year of age are working. Both mom and dad are at work each day from 9 to 5. And most of them have children, and children need attention and time. Mom and dad have to be able to be both good parents and good workers in order to earn the wages that support the family.

Parents who want to take time off from work to care for a newly born child, for the most part, have no right to do so. They are dependent upon the benevolence of their employers to be able to take time off to care for their children.

Workers who become seriously ill or whose children become sick have no leave rights.

Many companies have recognized this problem and have developed supportive programs to meet the needs of their employees. These employers have found parental leave programs not only to be cost effective, but also to improve the stability, morale, and loyalty of their workers.

Still, the majority of employers have not yet dealt with the changing needs of the workforce. Currently, only about 40 percent of all working women get paid maternity leave for 6 to 8 weeks. This has put stress on both workers and their marriages.

At work, the effects are found in employee turnover, tardiness, absenteeism, and reduced productivity. In the end, everyone loses, workers, their families and their employers.

Too many workers are being forced to make an impossible choice between the need to care for their families and the need to provide the financial support for that family. In order to ensure the stability of our families, we must address the economic realities they face.

I look forward to the hearing this morning and the testimony of today's witnesses. We want to work with each of you to ensure that this bill is both workable and adequately meets the needs of today's workers.

Mrs. Roukema.

Mrs. ROUKEMA. Thank you, Mr. Chairman.

Mr. Chairman, I do not have a prepared statement here today, not because I haven't thought long and hard and very carefully about this bill, but because I would rather make some extemporaneous remarks here.

I thank you for calling this hearing, especially since I was unable to attend the previous hearing we had on this subject last fall because of pressing business, a mark-up, I believe, in the Banking Committee.

Certainly I have been very acutely aware of the stepped up media attention to this issue. I think it is a consequence of the fact that the bill is coming before this committee but the attention, may also be a consequence of a multiple number of issues that relate to family life, family structure, divorce rates, single heads of the families, and all the socioeconomic issues that relate to those changing demographics of society.

So, this bill, in many respects, focuses the attention of a lot of disparate groups that are concerned about a lot of these socioeconomic issues and they come to rest on either substantive grounds or symbolic grounds on this bill.

Now, I am going to be careful about how far I go in what I have to say here this morning, but I am going to make a couple of candid statements.

One, as you know, Mr. Chairman, I have a problem with the length and breadth of this bill. It is obviously too far reaching and I think too far reaching both for the ultimate good of the workforce as well as the ultimate good of the business community.

Second, there is a problem that is perhaps more fundamental, and this is more of a philosophical one that I and many of my colleagues are going to have to wrestle with, and that is, is this subject an appropriate one for Federal standards.

I am not dismissing it out of hand, but I think that is a central issue here that this committee and the full committee are going to have to wrestle with before we can ever bring any kind of a bill to the floor.

Third, I just want to give an example of some of the problems that this approach creates and has created in my own office, and I suggest that if it is a problem in my office, it is an even greater problem if we are setting this out in the private sector as a bill that business, particularly small business, has to contend with.

For example, I am very generous in my maternity and, for that matter, parental leave policies, very generous. But in a small office, such as a congressional office that generosity results in an extraordinary workload being taken over by other members of the staff.

Now, in a situation where that person, in most cases a female, but if it were men it really makes no difference under the parental leave approach, an extended leave for a person in a managerial or policymaking position provides an impossible situation for offices such as ours. District manager, administrative assistant, one cannot readily fill in with temporary help; in such cases there is no one of like-minded skill to fill in.

If this is a real problem for me and a real problem for you and all our colleagues, it is only compounded and geometrically worse in a small business situation.

So, these are some of the problems I have with the bill.

I won't go into conflicting testimony on bonding. As the wife of a psychiatrist, I will not go into conflicting testimony. I don't want to take on Dr. Brazelton as far as the question of bonding. That is another issue.

I hope that the question of the bonding issue, although prominent in the press, remains out of this discussion of the bill because I think it is more appropriately identified with the question of women's rights under maternity leave and the disabilities relationship to disability policies.

With that, Mr. Chairman, I think we are ready to continue.

Mr. CLAY. Thank you.

Chairman Murphy, do you have an opening statement?

Mr. MURPHY. Thank you, Mr. Chairman, a very brief one.

As chairman of the Labor Standards Subcommittee, I am pleased to join with you, Mr. Chairman, as chairman of the Labor-Management Relations Subcommittee, in convening today's hearings.

Both the American workplace and the American family have undergone tremendous change within the last quarter century. The Bureau of Labor Statistics at the Department of Labor estimated that nearly 60 percent of mothers in families with children under 18 were working during the fourth quarter of 1985. The total number of families with employed mothers jumped to 18.2 million last year, an increase of 765,000 for 1985 alone. The two-income family has become the norm, rather than the exception in the American workforce.

Today's hearing is on legislation which recognizes the changing nature of work and family life in America. We must not let the American family become an endangered species.

I appreciate the opportunity to join with you and my other colleagues in holding today's hearing. Thank you, Mr. Chairman.

Mr. Clay. Thank you.

The first witnesses this morning will consist of a panel, Iris Elliot of Chesterfield, MO, and Frances Wright of Virginia Beach, VA.

Good morning and welcome to the committee.

Without objection, your statements will be entered in the record in their entirety, and you may proceed as you desire.

STATEMENTS OF IRIS ELLIOT, CHESTERFIELD, MO, AND FRANCES WRIGHT, VIRGINIA BEACH, VA

Ms. Elliot. Good morning. My name is Iris Elliot, and I live in Chesterfield, MO. Thank you for inviting me to testify before your committees on an issue that is very important to me and my family.

On August 12, 1985, my son Marc was born with a severe intestinal birth defect called Hirschsprungs Disease. The doctor said my son would be in the hospital a long time, months, maybe even six.

This was the worst case the doctor had ever seen, and because his case was so severe it was unclear what type of treatment would be used and how he would progress.

It is now 9 months later, Marc came home in February after 6 months in the hospital and three surgeries.

Even though I had a seriously ill baby, I knew I only had 6 weeks off from the day he was born before I had to go back to work. My doctor had given me a 2-week extension since he felt I physically needed the extra time off. And he was also worried about my mental state at the time, too.

Before the birth of my baby, I had checked with my employer, a large corporation, about how much time I was allowed to be with a newborn. I was not pleased with the company's policy of 6 weeks off, so I went through the ranks and finally had a meeting with the manager of personnel.

This individual thought I had some good ideas—I had recommended a 3-month leave without pay and a job guarantee—but he said it couldn't be done since they had to give leaves for every other reason. He didn't feel it was a very important issue. I asked him what would happen if someone had a sick baby. He said there wouldn't be any exceptions made.

You can imagine how strange I felt when I knew I had a sick baby and had ironically tried to change the leave policy at my job before he was born.

If I wanted to take care of my baby during his illness, my company offered me only one option, to take a 90-day leave without pay and no job guarantee.

I could not choose this option since I was the only medical insurance carrier in the family. In no way could I jeopardize these benefits.

We also did not know to what extent our expenses not covered by insurance would be, so I could not risk losing my job.

The truth is that I had no choice. I had to go back to work. Management at my job tried to do everything they could do to help me, but they had to stay within company guidelines.

I was frustrated, angry and helpless. One morning my husband pointed out an article in our local paper about Congresswoman Schroeder sponsoring a bill on parental leave. From that point I have committed myself to do everything possible to get this bill passed.

The 4 months I was working while Marc was in the hospital were grueling on me. On some days I would drive one-half hour to work, put my time in there, drive one-half hour to the hospital to be with my baby for 1 hour and 15 minutes, and then hurry home to greet my preschooler. I tried to maintain a normal life for him as best I could.

Seeing Marc for a little over an hour was heartbreaking, difficult for a mother of a healthy baby and so much worse for a mother of a sick child.

We have no family living near us, so my older son was my total responsibility. Luckily, I have some terrific friends who helped me so much during this time.

My husband is in commission sales and had to keep up his intense schedule to make sure our bills were paid.

People often said to me, it would be good for me to go back to work to get my mind off of things. I knew that Marc would not leave my thoughts at work and this emotional burden was a hindrance on my job performance.

As far as I am concerned, working while Marc was in the hospital was a tremendous burden that stole precious time away from my day, time that I could have been able to spend with my sick baby and confused preschooler.

I feel like I am one of the lucky parents. With a lot of determination and an abundance of nervous energy and constant juggling of schedules, I managed to be with my baby every day and nurture him.

The doctors and medical staff are marveling over his progress and feel that my being able to nurture and stimulate him has been a major help, especially developmentally.

Unfortunately, we saw babies and children at the hospital who were not so lucky. They had parents who could not get away from their jobs and only saw them a few times a week, or were single parents who could not afford to miss work.

Now you know why I feel so strongly about this bill. No parent should ever have to be torn between nurturing their seriously ill child and reporting to work like I did. If this bill passes, I feel like something positive will come out of my son's illness.

Thank you.

[The prepared statement of Iris Elliot follows:]

PREPARED STATEMENT OF IRIS ELLIOT

Good morning. My name is Iris Elliot and I live in Chesterfield, Missouri. Thank you for inviting me to testify before your committees on an issue that is so important to me and my family.

On August 12, 1985 my son Marc was born with a severe intestinal birth defect called Hirschsprungs Disease. The doctor said my son would be in the hospital a long time—months, maybe even six. This was the worst case the doctor had ever seen, and because my son's case was so severe, it was unclear what type of treatment would be used and how he would progress. It is now nine months later—Marc came home in February after six months in the hospital and three surgeries.

Even though I had a seriously-ill baby, I knew I only had six weeks off from the day he was born before I had to go back to work. My doctor had given me a two week extension since he felt I physically needed the extra time off.

Before the birth of my baby, I had checked with my employer about how much time I was allowed off to be with a newborn. I was not pleased with the company's policy of six weeks off so I went through the ranks and finally had a meeting with the manager of personnel. This individual thought I had some good ideas, I recommended a three month leave without pay with a job guarantee, but he said it couldn't be done since they'd have to give leaves for every other reason. He didn't feel it was a very important issue. I asked him what would happen if someone had a sick baby. He said there wouldn't be any exceptions made.

You can imagine how strange I felt when I knew I had a sick baby and had ironically tried to change the leave policy at my job before he was born. If I wanted to take care of my baby during his illness, my company offered me only one option to take a 90 day leave without pay and no job guarantees. I could not choose this option since I was the only medical insurance carrier in the family and in no way could I jeopardize these benefits. We also did not know to what extent our expenses not covered by the insurance would be, so I could not risk losing my job. The truth is I had no choice. I had to go back to work. Management at my job tried to do everything they could do to help me but they had to stay within company guidelines.

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People often said to me "It would be good for you to go back to work to get your mind off things." I knew that Marc would not leave my thoughts at work and this emotional burden was a hindrance to my job performance. As far as I'm concerned, working while Marc was in the hospital was a tremendous burden that just stole precious time away from my day—time that I should have been able to spend with my sick baby and confused preschooler.

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Unfortunately we saw babies at the hospital who were not so lucky. They had parents who could not get away from their jobs and only saw them a few times a week, or were single parents who could not afford to miss work.

Now you know why I feel so strongly about this bill. No parent should ever have to be torn between nurturing their seriously ill child and reporting to work like I did. If this bill passes I feel like something positive will come out of my son's illness.

Mr. CLAY. Thank you.

Ms. Wright.

Ms. WRIGHT. Good morning. Thank you for inviting me.

My name is Frances Wright. For 10 years I worked as a retail manager at a large and half-size clothing store in Virginia.

On December 31, 1982, I had surgery for the first time to remove cancer in my colon with extension to the bladder. I needed additional surgery in February and March to close and correct an obstruction in my colon.

I returned to work in April. Unfortunately, I needed emergency surgery to correct an intestinal obstruction at the end of June, but was able to return to work 1 month later, on August 1, 1983.

My doctors advised, as part of my recovery from colon cancer, that I begin chemotherapy treatments for 18 months. These treatments would be administered over a 5-day hospital stay.

Rather than miss any further time away from my job, I arranged to take the therapy on weekends and on my days off during the course of the month. This way I was able to receive treatment and only miss 1 day of work a week.

Unlike many cancer patients, I had no loss of hair, nausea or any of the other side effects, like diarrhea. I did not experience any of the side effects common to chemotherapy treatment.

My employer was aware at all times of my medical treatment and knew I planned to use my annual vacation time to cover my absence from work.

During my initial surgery, my employer, although there was no formal medical leave policy, was generous in affording me time off. The 3 months I had taken off was agreed to based on my individual circumstances and without any job guarantee.

Upon my return and once it became clear that my medical treatment would be extended, the company's generosity dissipated.

In November 1983, after 10 years of steady employment at this company, my employer retired me.

The operational manager, who I had only met twice before on a one-to-one basis, took me to a delicatessen, hardly the most professional of environments, and told me of the company's decision over a cup of coffee.

I felt emotionally crushed. I was embarrassed and demoralized. I was at a loss for words. I was just stunned at this action.

There had been no discussion beforehand between the company and myself. The decision had been made by my corporate management without any notice to or input from me. I was completely caught off guard and not prepared for this eventuality.

Even though in the back of my mind a part of me feared that this could happen, I had thought that my job had been secure. No one had ever indicated that my job would be in jeopardy due to my need to take off time for my illness.

Prior to my illness, I had only been absent from work on two occasions; once for 2 weeks because of elective surgery, and once for 1 week after my shoulder was injured in an accident on the job which required that I stay in the hospital. I had always been proud of my record for attendance, punctuality, and productivity.

The company agreed to pay me disability and told me to file for disability under Social Security.

Both my doctor and I denied that I was disabled. I was denied Social Security disability because it was determined that I was not disabled.

I sought legal counsel, but was advised that nothing could be done.

I even called the Equal Employment Opportunity Commission, but they told me that there was no law protecting workers from losing their jobs due to an illness or cancer.

When I lost my job, I was unaware that my employer had not even sought expert medical documentation on my condition before they made their decision.

According to the American Cancer Institute, 96,000 people are predicted to become colon cancer patients in 1986, with a cure rate of 87 to 90 percent if caught in the early stages.

Neither I nor they have any right to job protected medical leave.

I resented being treated like a disposable employee. After I lost my job, the insurance company told me I couldn't work or I would lose my disability benefits.

There are no words to express how difficult this period of time was for me. Because of my illness, I lost my job, my self esteem, my job satisfaction, as well as the continuity of a salary and benefits as a result of my job performance and seniority. I was angry and I was frustrated. I had to fight against becoming bitter over this. I had to fight to keep my enthusiasm, my vitality and desire to lead a productive and meaningful life based on my own self motivation and productivity.

Two years later, in September 1985, after I had started another job, a division of my old company was taken over by a new owner. Not only did the new owner hire me, fully aware of my medical history, but at a $5,000 increase in salary. Since then, my new employer has been wonderful.

Even after my colon cancer returned in the beginning of 1986, I was able to take off 5 weeks with pay and without any risk of job security. I was able to return to my job without my position being affected.

Since then, everything has been all right. I have a good job that has afforded me the opportunity and the satisfaction to remain a useful and productive employee.

I thank you very much.

[The prepared statement of Frances Wright follows:]

PREPARED STATEMENT OF FRANCES WRIGHT

Good Morning. My name is Frances Wright. For ten years, I worked as a retail manager at large and half size clothing store in Virginia. On December 31, 1982, I had surgery for the first time to remove cancer in my colon with extension to the bladder. I needed additional surgery in February and March to close and correct an obstruction in my colon. I returned to work in April. Unfortunately, I needed emergency surgery to correct an intestinal obstruction at the end of June, but was able to return to work one month later, on August 1, 1983.

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In November of 1983, after 10 years of steady employment at this company, my employer "retired" me. The operational manager, whom I had met only twice before, took me to a delicatessen, hardly the most professional of environments, and told me of the company's decision over a cup of coffee. I felt emotionally crushed. I was embarrassed and demoralized. I was at a loss for words, I was so stunned.

There had been no discussion beforehand between the company and myself. The decision had been made by corporate management without any notice to or input from me. I was completely caught off guard and unprepared. Even though in the back of my mind a part of me feared that this could happen, I had thought that my job had been secure. No one had ever indicated that my job would be in jeopardy due to my need to take time off for my illness.

Prior to my illness, I had only been absent from work on 2 occasions—once for two weeks because of elective surgery and once for one week after my shoulder was injured in an accident which required that I stay in the hospital. I had always been proud of my record for attendance, punctuality and productivity.

The company agreed to pay me disability and told me to file for disability under Social Security. Both my doctor and I denied that I was disabled. I was denied Social Security disability because it was determined that I was not disabled. I sought legal counsel, but was advised that nothing could be done. I even called the Equal Employment Opportunity Commission but they told me there was no law protecting workers from losing their jobs due to an illness or cancer.

When I lost my job, I was unaware that my employer had not even sought expert medical documentation on my condition before they made their decision. According to the American Cancer Institute, 96,000 people are predicted to become colon cancer patients in 1986, with a cure rate of 87-90% if caught in the early stages. Neither I nor they have any right to job protected medical leave.

I resented being treated as a disposable employee. After I lost my job, the insurance company told me I couldn't work or I would lose my disability benefits. There are no words to express how difficult this period of time was for me. Because of my illness, I lost my job, my self-esteem, my job satisfaction, as well as the continuity of a salary and benefits as a result of my job performance and seniority. I was angry and frustrated. I had to fight against becoming bitter. Over this I had to fight to keep my enthusiasm, vitality and desire to lead a productive and meaningful life based on my own self-motivation and productivity.

Two years later, in September of 1985, after I had started another job, a division of my old company was taken over by a new owner. Not only did the new owner hire me, fully aware of my medical history, but at a $5,000 increase in salary. Since then my new employer has been wonderful. Even after my colon cancer returned in the beginning of 1986, I was able to take off 5 weeks with pay and without any risk to my job security. I was able to return to my job without my position being affected. Since then, everything has been alright. I have a good job that has afforded me the opportunity and the satisfaction to remain a useful and productive employee.

Mr. CLAY. We thank both of you for your testimony.

Ms. Elliot, in Ms. Wright's testimony, she said that her firm had no formal medical policy or parental leave policy What was the situation in your firm?

Ms. ELLIOT. Well, you are allowed 6 weeks off for childbirth from the day the baby is born, and then if your doctor gives you any more time off, they do give you 30 days off, when my child came home in February. Personal time off, the maximum you can take is 30 days without taking a leave of absence. It is not considered—you are still on the payroll and everything, it is without pay.

They told me at the beginning I could take it at any time, but I didn't know whether to take it because I knew that he would be in the hospital, so I waited until he came home.

Mr. CLAY. Did they have a written policy?

Ms. ELLIOT. Well, the policy of the 6 weeks from childbirth is just like any other medical thing, that is written. The 30 days personal leave is written in their rules book. But that is it. After 30 days, if you need any more days, your job—it is a personal leave, it is a leave of absence and you are not guaranteed your job.

Mr. CLAY. This question is directed to either of you or both.

Why do you think employers have not been more responsive to parental and medical leave needs?

Ms. WRIGHT. Why have they not been responsive?

Mr. CLAY. Yes. And let me tell you why I ask that, because some contend that there is no need for Federal law, and that is why I am posing the question to you.

Ms. WRIGHT. What protection does the worker have in the workforce if there are no laws to guide or direct them?

When I approached counsel, they said there was nothing they could do, it was just a nice way of saying, Frances Wright, you are fired.

Ms. ELLIOT. The company that I worked for, when I approached them, as I said, before my baby was born, said that—see, part of my job does get leave when they have a baby, but they are union and I am nonunion. They said the reason they didn't want to change it is because if they had parental leave, they would have to give leave for all other different reasons.

But it was OK for them to discriminate with the union because it was in their contract.

Mr. CLAY. And individually, you couldn't negotiate that kind of agreement?

Ms. ELLIOT. Right, because I am not in the union. The area that I work in is nonunion.

Mr. CLAY. Mrs. Roukema.

Mrs. ROUKEMA. Ms. Elliot, you indicated that you worked for a large corporation. I don't want to know the name of that corporation, but what do you mean by a large corporation?

Ms. ELLIOT. I believe there are 26,000 employees nationwide.

Mrs. ROUKEMA. It is a nationwide corporation?

Ms. ELLIOT. Right.

Mrs. ROUKEMA. The description of your kind of job, what would you say? It is a white collar job, obviously. But management?

Ms. ELLIOT. No. It is, I would say—there are many people that do my job. I don't want to go into details because of—

Mrs. ROUKEMA. No, but it is not clerical and it is not management, but it is a white collar job?

Ms. ELLIOT. There are a lot of people that do the same job as I do.

Mrs. ROUKEMA. Well, I will ask the employers later what they calculate the cost to be, I mean on an average, what would be the numbers of people that statistically might find themselves in your place?

Now, what do you think, under these circumstances, would have been the right position for your employer to take?

They did give you 30 days, as I understand it.

Ms. ELLIOT. I would say at least a 90 day leave with a job guarantee.

Mrs. ROUKEMA. A 90 day leave with a——

Ms. ELLIOT. See, I could have taken a 90 day leave, but my job wasn't guaranteed. There was no way that I could have done that because they are hiring a new type of employees at less salary than I made.

Mrs. ROUKEMA. But you literally got a 60 day leave. So, you are talking about the difference of 30 days.

Ms. ELLIOT. Well, no. I got 6 weeks leave for medical, for having a baby, and then like the union people on my job, if I could have gotten a 90 day leave on top of that with a job guarantee, and I think they really wanted to give it to me but they couldn't because it is just not the rules. I mean, they felt very bad about the situation. But, you know, it is a large corporation and they will not make exceptions.

Mrs. **Roukema**. Did I understand that you indicated that you could not entertain the thought of leaving your position because you were the only person in the family that had medical coverage?

Ms. **Elliot**. Right.

Mrs. **Roukema**. Let me see, Ms. Wright, whether I have a question for you. I am not clear as to why you felt that the disability or you said that the doctors would not approve you as a disability case under SSI, or did you not want to be?

Ms. **Wright**. My doctor didn't agree I was disabled.

Mrs. **Roukema**. I see.

Ms. **Wright**. I wanted the right to work.

Mrs. **Roukema**. You didn't indicate—well, you wanted the right to work, OK. I won't go into that, but I heard you. I heard you.

You didn't indicate the size of the company. What I am getting at, later as we get into these hearings further there is going to be a lot of questions about the cost effectiveness of policies that we cannot ignore. I mean, from the point of view of the humanity and the compassion here, there is no question. But when we get into numbers of employees that businesses have to realistically deal with, what is the cost to that company and the cost to the consumer ultimately?

So, what size company are you talking about?

Ms. **Wright**. The company that I was previously working for had 150 stores throughout the——

Mrs. **Roukema**. So, it is substantial?

Ms. **Wright**. It is substantial.

Mrs. **Roukema**. In your case, was it the same situation? Was there no union contract or was everyone covered by written policies?

Ms. **Wright**. No, we were not.

Mrs. **Roukema**. All right. Thank you very much.

Mr. **Clay**. Mr. Bartlett.

Mr. **Bartlett**. No questions, Mr. Chairman.

Mr. **Clay**. Mr. Fawell.

Mr. **Fawell**. No questions.

Mr. **Clay**. We want to thank you for your testimony.

The next witness is Thomas Donahue, secretary-treasurer, AFL-CIO.

Welcome to the committee, and without objection, your entire statement will be included in the record and you may proceed as you desire.

STATEMENT OF THOMAS DONAHUE, SECRETARY-TREASURER, AFL-CIO

Mr. **Donahue**. Thank you, Mr. Chairman.

I am Tom Donahue, secretary-treasurer of the AFL-CIO.

The AFL-CIO appreciates the opportunity to present our views on H.R. 4300, the Parental and Medical Leave Act.

The AFL-CIO welcomes and supports this legislation to enable working parents to meet their responsibilities both as wage earners and as parents.

H.R. 4300 is not perfect, the leave it provides is unpaid leave, but the guarantee of that leave with a new child or when that leave is required by a worker's serious health condition certainly would represent major progress for the country.

Our executive council adopted a statement at its last meeting in February on work and the family, and among the other provisions of that statement, we urged the Congress to pass legislation to ensure that parents can take a reasonable parental leave to care for newborn, newly adopted or seriously ill children without risking loss of their jobs.

That council statement is appended to our testimony, Mr. Chairman. I would not read it to you, but I would note that it speaks to our efforts to strengthen the family, and I would like to just read you one sentence of it.

It says:

> In the conviction that work, and the rewards of work, are the foundations of the stable, hopeful family life that engenders self-reliance, self-respect and respect for others, unions have sought to advance the welfare of working people and their families through collective bargaining and through legislative and political activity.

And it is in the pursuit of that effort through legislative activity that we are here this morning.

Our executive council has had a committee on the evolution of work examining over the last 2 or 3 years the changes in the workplace and the workforce. And we have been stunned, as this committee has been impressed, I am sure, with the profound change that is taking place in that workforce and with the implications of that change for families, for children and consequently for Government and for society.

You have heard, I am sure, from countless witnesses the rapidly growing statistics on the participation of women in the workforce, and we will start with an example of the extensive growth of participation rates of women with young children, including those with infants.

The growth of those two wage earner families, for the overwhelming part, has been thrust upon those families by the economic conditions of the Nation over the last 10 or 15 years and the rapid rise in the number of single parents is making it more and more difficult for people to have the kind of interaction with young children that is so important to child development.

I haven't heard or read the testimony of all of the witnesses, all of the experts who appeared before you on that subject, but I don't think any father or mother needs any learned lecture on that subject to accept the principle and the value of that time spent with children.

I think it is shameful that, unlike practically every other industrial nation, we simply don't have any national leave policy to enable parents to have some time for the child's rearing up period.

Our company policies vary greatly and many totally ignore the father's role. And even when they allow a mother some time off, they provide no guarantee that a job or a comparable job will be available when she returns.

That kind of policy gap exists equally with respect to the serious health conditions which affect workers personally or affect the child of a worker.

And so, we commend you for this piece of legislation, commend you for taking the first steps to try to fill those policy voids.

The provisions relating to 18 weeks of unpaid parental leave, 26 weeks of unpaid sick leave, with the maintenance of whatever the existing health benefits for those workers, with a guarantee of basic job security, as minimal as we regard those provisions to be, would do much to help working parents.

Obviously, as I think was eloquently stated by one of the earlier witnesses, most of our trade union members are well represented on these issues and most of our contracts provide for the right to time off for medical leave reasons and the right to return to work.

But we are citizens in the world and are concerned about the rest of the Nation, and concerned particularly about those low wage industries so filled with women these days where any kind of protection on this subject is woefully lacking.

We are, as I say, the only industrialized nation in the world without a national policy, and this is certainly a modest effort on the part of the Congress to put in place some basic structure of something for the workers of America who need to not only spend some time with their children but to care for their own health needs.

There is one small point that I would call to the committee's attention which may require some fine tuning, and that is the question of the applicability of this legislation and its effects on the jointly trusteed, multiemployer health plans.

A multiemployer fund, is made up, obviously, of a collection of many small employers, and the contribution is based generally on time worked or on a contribution per hour.

The result then, is that that fixed pool of assets simply may not be able to expand quickly to cover the additional costs of this kind of coverage. We urge only that that is a technical matter which needs to be adjusted within the legislation, and I think that that is a point of fine tuning that can be cared for either by phasing in the coverage or whatever devices can be worked out.

I do not believe that multiemployer funds should, in the final analysis, be treated any differently than single employers by reason that the funding is from different employers.

I would also note, Mr. Chairman, as a final note, that in addition to being the secretary-treasurer of the AFL-CIO and a representative of the workers in that capacity, I am also an employer, since as secretary-treasurer I carry the responsibility for the direction of the daily work for the federation, which employs about 400 people, and about 250 of those in our Washington office.

We are an employer, I think, with quite fair leave policies and have dealt with all of the problems of disability leaves and parental leaves, and find that it is quite possible to accommodate all of these things without any great disruption.

And particularly in the case of parental leave, these are not emergency situations and there is time to adjust to them.

We have been able to work out our employment policies in such a way that we are able to replace people who are away and make it clear to the incoming employee that he or she is being hired for some fixed period which may or may not expand.

So, I think that all of those things are possible and adjustable for the caring employer who wants to do those things.

The record is that there are lots who aren't, who haven't done that, for whatever reasons, and I think the passage of this legislation would place proper social responsibility before those employers.

So, we commend you for the legislation and urge you all to support it and to put it in place as rapidly as possible, Mr. Chairman. Thank you.

[The prepared statement of Thomas R. Donahue follows:]

PREPARED STATEMENT OF THOMAS R. DONAHUE

The AFL-CIO appreciates the opportunity to present our views on H.R. 4300, the Parental and Medical Leave Act. The AFL-CIO welcomes and supports this legislation to enable working parents to meet their responsibilities both as wage-earners and as parents. H.R. 4300 is not perfect—the leave it provides is unpaid leave—but the guarantee of leave to spend time with a new child or when leave is required by a child's or the worker's serious health condition will represent major progress for this country.

Recently, the AFL-CIO Executive Council adopted a major policy statement on Work and the Family which, among other things, urged the Congress to "pass legislation to insure that parents can take a reasonable parental leave to care for newborn, newly adopted, or seriously ill children without risking loss of their jobs." The AFL-CIO Executive Council Statement is appended to this statement and I respectfully request that it be made a part of the record.

I think we have all been impressed by the recent revolutionary change in the labor force and the profound implications of that change for families, children and therefore society. The percentage of women in the labor force has increased from 19 percent in 1900 to more than 52 percent today. In terms of its significance for social policy, the most striking feature of the increase in female labor force participation has been the increase in the participation rates for women with young children, including women with infants under the age of one.

The growth of two wage earner families and the rapid rise in the number of single parents are making it more and more difficult for parents to have the kind of interaction with their young children so important to good child development. Child care experts contend that the first months after birth are the most important to the future growth and development of a child. The bonding that takes place during this time is crucial to both child and parent. Yet, too often, parents are denied the option of spending this important time with their children because to do so will endanger their employment.

Unfortunately, unlike most other industrial countries, the United States does not have any national leave policy to enable parents—both parents—to have time at home with a child during this important period. Company leave policies vary greatly. Many totally ignore the father's role and, even when allowing a mother time off, provide no guarantee that a job will be available when she returns.

The same policy gap exists as to periods when a worker requires time away from the job in consequence of a serious health condition affecting the worker personally or the worker's son or daughter. The Pregnancy Discrimination Act of 1978 (PDA), which requires that employers who provide disability leave or insurance must also treat pregnancy like any other disability, provides important but very limited protection. An employer is in compliance with the PDA if no one is provided disability benefits, since all employees are treated equally.

We commend the sponsors of H.R. 4300 for taking the first step to fill these policy voids. Its provision entitling an employee to 18 work weeks of unpaid parental leave during any 24 month period to be at home with a newlyborn, adopted, or seriously ill child—with existing health benefits maintained during the leave period—will do much to help working parents who are struggling both to work and to care for their children.

The bill's guarantee of basic job security when workers become ill is equally essential. Generally, workers covered by collective bargaining agreements have a right to time off for medical reasons, during which they have cash benefits and continued health care coverage. We are concerned, however, that many employers in non-union situations still provide little or no protection of this kind. Such protection is woefully lacking in those low wage industries that seem to be a leading growth area in our economy. Of greatest concern are the more than 6.4 million single women who are heads of households, whose families are placed in a precarious financial position because of the lack of such protection when illness strikes.

H.R. 4300 does much to improve this situation by requiring employers to grant up to 26 weeks of sick leave, albeit unpaid, for a serious illness during any twelve month period, and to continue the employee's health insurance coverage during the period of leave.

Presently, the United States is the only industrialized nation in the world without a national policy to protect workers when they take needed parental or medical leave. H.R. 4300 is very modest legislation when measured against what is being done in other industrialized nations.

We call to your attention one aspect of the bill that may require fine-tuning to deal with the special circumstances of jointly-trusteed, multiemployer health plans. That is the bill's requirement that health benefits of the employee shall be maintained for the duration of parental or medical leave.

A multiemployer plan is a pooled fund to which a number of employers contribute. Contributors may include hundreds or even thousands of small companies, and contributions are generally based on time worked or units of production. Contributions based on hours worked is a very common formula, with the employer obligated only to pay so much per hour per worker. This contrasts with a single employer situation where an employer is responsible to pay for the negotiated level of benefits. Thus, multiemployer plans have a fixed pool of assets which do not automatically expand to pay newly mandated benefits, but instead must be used to fund those benefits selected by worker and employer representatives. We urge that the technical problems relating to multiemployer health plans be resolved before final passage of this bill.

In conclusion, we reiterate our support for passage of H.R. 4300, the Parental and Medical Leave Act. This legislation would greatly improve the situation for working parents and workers afflicted with serious health problems. We commend the Subcommittees for the efforts you are making to achieve this goal and will be happy to work with you on this important task.

WORK AND FAMILY

The family is the key to social stability, community progress and national strength. To strengthen the family is at the heart of the labor movement's long struggle to raise wages and living standards, to democratize education, leisure and health care, to broaden individual opportunity and secure dignity in old age.

In the conviction that work, and the rewards of work, are the foundations of the stable, hopeful family life that engenders self-reliance, self-respect and respect for others, unions have sought to advance the welfare of working people and their families through collective bargaining and through legislative and political activity.

As a result, generations of Americans have benefited through higher wages, negotiated pensions and health and welfare programs, increased job security and increased leisure for enjoying family life. The entire society has gained through union-won wage, hours and overtime laws, child-labor laws, Social Security, Medicare and Medicaid, equal employment opportunity, pay equity, day care and a wide range of other programs that support, protect and advance the quality of family life.

Changes are underway that make work and family issues more vital thatn ever to the health of America's society. Women are vastly increasing their participation in the workforce. The number of single-parent families is growing rapidly, and so are families that require two incomes.

Many who label themselves "pro-family" are in fact the architects and supporters of government policies that have drastically weakened public policies that benefit children, the elderly and the unemployed.

Two out of three jobless workers receive no unemployment benefits at all. Those who do receive no more than 35 percent of previous wages. More and more low-wage, year-round workers fail to earn enough to lift their families out of poverty. In 1985, a full-time worker at the minimum wage earned only $7,000, less than half of the $17,000 needed, accorded to the Bureau of Labor Statistics for a "minimum but adequate" living for a family of four, and far below the official $11,000 poverty line for such a family.

At the same time, more and more working families need day care for small children and other dependents, including elderly and handicapped families members.

Many families with one and even two earners find that the cost of day care consumes 25 to 50 percent of their income, at the rate of $3,000 per year per child.

Clearly, both the availability and the affordability of child care have reached crisis proportions.

There are no simple, easy or cheap ways to meet the needs of America's families who have diverse and sometimes conflicting interests. But unions have special responsibilities and opportunities to promote and defend family-oriented programs, both public and private.

For example, among benefits to be won through collective bargaining are equal employment opportunity, pay equity, maternity and paternity leave, child care for union members, flexible work schedules to help working parents, the right to refuse overtime and anti-sex-discrimination.

The AFL-CIO continues to urge affiliates, whenever possible, to pursue such family-strengthening programs through the collective bargaining process, including joint employer-union sponsored day care centers, information and referral services, allowances for care in existing centers, time off when the child or dependent is sick, and establishing flexible working hours to accommodate caring for children or other dependents.

Unions should work cooperatively with parents, child care activists, churches and other civic groups to insure that care provided meets quality standards.

The AFL-CIO also urges support for a broad range of federal action to strengthen the American family, including opportunities to work and earn enough for decent family life, including:

National economic policies aimed at full employment in line with the Humphrey-Hawkins Full Employment and Balance Economic Growth Act of 1978.

Improved unemployment insurance, health care protection, and mortgage and rental relief for unemployed workers.

Quality health care for all families.

More vigorous enforcement of anti-discrimination and equal opportunity laws and promotion of pay equity.

An increase in the minimum wage to assure more adequate income for the working poor.

A shorter workweek, reduced work hours per year and higher overtime penalties to increase opportunities for family life.

Specifically, the AFL-CIO urges the Congress to:

Enact a broad-based national program to make day care available to all who need it and to provide financial incentives to states for encouragement of programs in early childhood education and child care services, as well as services for the elderly and the disabled, and to improve licensing and monitoring of day care.

Pass legislation to insure that parents can take a reasonable parental leave to care for newborn, newly adopted or seriously ill children without risking loss of their jobs.

Restore funding to family support programs including Aid to Families with Dependent Children, food stamps, and Medicaid.

Restore and increase funding for social services under Title XX of the Social Security Act to meet the needs of abused children, the mentally ill, and the elderly, as well as to provide child-care services for low-income working mothers.

Retain the tax credit now allowed for child care expenses. Congress should resist the Reagan Administration's efforts to change the tax credit to a tax deduction—making it far less advantageous to lower-income families.

Work and family problems are complex. They will not yield easily or soon to the private and public efforts we are proposing. The AFL-CIO pledges its continued support of efforts to solve these problems.

Mr. **Clay**. Thank you.

When you mentioned that you have been quite successful in negotiating the benefits, the parental, and medical benefits for your membership, can you indicate how many or what percentage of your membership is protected or covered by similar features of this bill, and also compare for us how your negotiated benefits stack up with the provisions that are being recommended in this bill?

Mr. **Donahue**. Sure. I would be happy to submit our information on that. I don't have the statistics on it, Mr. Chairman. But I would be happy to affirm to you that the overwhelming majority of negotiated contracts provide both for disability leave and for parental leave of one kind or another, and would provide in the overwhelming number of cases for some wage replacement during that period of disability or during a short period of maternity leave, wage replacement for perhaps 1 month or 6 weeks.

Mr. CLAY. But certainly not up to 26 weeks or 18 weeks that we are talking about?

Mr. DONAHUE. In the case of disability benefits, the State laws have set a standard, I think, for the negotiation of disability benefits. And there it would not be infrequent to find coverage up to 26 weeks in the event of his or her disability, and the replacement of 50 to 75 percent, I would guess, of normal income.

In recent years, all of those figures, on the UI side as well as worker's compensation side, as well as on the disability side, have eroded very seriously, Mr. Chairman, in the current economic situation and they are probably running now closer to the 35 to 50 percent wage replacement.

Mr. CLAY. How would your collective-bargaining efforts be affected if were this legislation in law?

Mr. DONAHUE. I think our role, since the legislation is—I mean no affront to its supporters, Mr. Chairman—but since the legislation is so minimal in its effect, I don't think it would importantly affect our collective-bargaining processes.

It provides the floor for unrepresented workers. It is quite conceivable to me that we have a percentage of union members who are not covered for the kinds of minimal protection your bill would offer, and so to that extent they would benefit from it.

Mr. CLAY. I addressed some business people in my district this past weekend, the National Association of Manufacturers, and in the question and answer period there was a great deal of concern about guaranteeing the precise or exact position.

There didn't seem to be that much hostility toward the bill itself, but they had some questions about things like that.

What is your feeling about guaranteeing the exact position?

Mr. DONAHUE. Well, my recollection, Mr. Chairman, is the bill provides for restoration to a position equivalent to the exact position, if that is possible, or alternatively to a position with equivalent stages, benefits, pay, and other terms and conditions. I don't find that an onerous condition.

It is, obviously, possible to conjure up that situation in which it is impossible to restore a person after 6 months to exactly the same job and the same desk, chair or workbench. But I don't think the alternative provision for comparable conditions and employment are onerous.

Mr. CLAY. Thank you.

Mrs. Roukema.

Mrs. ROUKEMA. Mr. Donahue, I don't think you answered this question before but I am not quite sure, in the context of Mr. Clay's question on the subject of the insurance costs. If you did answer it, let me ask it another way and you can give your response.

In terms of your union contract costs, what are the union figures as to the costs of the benefit package for the leave policy? What do you attribute the benefit cost component to the leave policy?

Mr. DONAHUE. I don't see any cost to an employer in the provisions of this legislation beyond the almost incalculable personnel cost of hiring or replacing, if indeed the person has to be replaced and that may not always be the case; that is the personnel cost associated with changing a person's records and that sort of thing, whatever training cost which might be attributed to a new employee doing that job.

But I don't see any cost to the employer providing unpaid leave.

Now, in the more normal negotiated collective-bargaining situation or in those States which have disability laws, there is a cost for disability protection which would provide wage replacement. But you are not talking about the wages question there.

Mrs. ROUKEMA. All right. So, as far as on a contractual basis, you just don't see that as a component. It will cost the employer, definitely.

Mr. DONAHUE. I see the employer's indirect costs in terms of personnel and administration, and training, but that is all.

Mrs. ROUKEMA. Now, what about—go ahead, I yield.

Mr. CLAY. I think there is one additional cost, the medical insurance.

Mr. DONAHUE. Oh, I am sorry.

Mrs. ROUKEMA. That is the next point I was getting at. I was going to get to that, Mr. Chairman. I thank you.

You made the reference to it being a technical question. I think maybe the health plan, though, goes beyond that, there are more than just technical questions involved. There are health benefit costs.

And I note that, although I haven't had a chance to read this full letter from the chief counsel for the Small Business Administration, that he has addressed to this committee, he does indicate that small firms can least afford to expand coverage and refers specifically to the health benefit costs.

And I just wonder, in your union negotiations, what the percentage cost is of your benefit package associated with these?

Mr. DONAHUE. That is really very difficult to say. The benefit package costs will vary a lot, depending on what is in the package.

Mrs. ROUKEMA. No; I am not talking about absolute costs. I am talking about percentages, on average. The percentage on average.

Mr. DONAHUE. Well, the percentages would vary if your benefit package includes health and welfare, pension, if you include vacation and holiday costs, if you include costs as some big companies would of maintaining a recreational facility or a vacation facility someplace, the percentage would obviously keep on growing.

I am sorry, I can't respond to the narrower question of what is the percentage of cost for a health and welfare plan.

But I don't even think you are examining that. I think what you are examining is what would be the added costs of coverage that would be represented by this legislation.

Mrs. ROUKEMA. That is right.

Mr. DONAHUE. And I would guess in the extreme for the parent who took the maximum 18 weeks and who had to be replaced—if you assume that each worker was replaced during that period of time—and the typical plan would have at least a 30-day exclusion of the new employee—coverage is rarely first day coverage, it is normally 30 days——

Mrs. **Roukema**. Yes.

Mr. **Donahue**. So, you are now talking about whatever that is, 14 weeks of coverage for the replacement employee, a quarter of a year's premium cost, I would guess, for a single employee, somewhere around $70 for a reasonable health and welfare plan. So, I guess in that case you are talking about $200 cost for the replacement employee. And sick disability replacement could run up to 5 months at maximum for the replacement employee.

I think that that cost has to be sought by examining the question of how many people would want to or be able to take advantage of an unpaid leave of this sort. The average worker cannot afford to take 26 weeks or 18 weeks even of unpaid leave.

So that I think the exposure to the employer in terms of that replacement cost for health insurance or the health insurance cost for the replacement employee would be really quite small, and I am not sure that that is not a cost that an employer should be expected to bear.

If people work for 7 years, as one of your earlier witnesses testified, or 15 years for an employer, I don't think that is an inordinate cost to bear.

Mrs. **Roukema**. Thank you very much, Mr. Donahue.

Mr. **Clay**. Mr. Bartlett.

Mr. **Bartlett**. Thank you, Mr. Chairman.

Thank you, Mr. Donahue, for this excellent testimony, and for the testimony of the two previous witnesses.

Mr. Donahue, let me see if I can ask you what kind of data is available on two subjects.

One is, do you have any sort of an estimate or is there any data available on the percentage of workers in the workplace that are already granted this kind of, or this minimal kind of leave, either pregnancy or medical? What percentage of the workplace, either union or nonunion, if you have it broken down, is already covered by these standards, would you estimate?

Mr. **Donahue**. I am sorry, I couldn't hazard a guess. The figures would be difficult to come by. The medical coverage figures are readily available, and I would hazard a guess for you that 90 to 95 percent of trade unions are covered by health and welfare benefit plans.

How many of those plans are maintained in place for a period of disability leave is it seems to me somewhere in the fact sheets that were distributed that I saw, something in excess of 60 percent of the people were covered by disability plans of one kind or another.

There is no specificity as to how many of those plans provided for 26 weeks or 18 weeks or what.

Mr. **Bartlett**. So, you don't have any estimate as to the percentage of even union plans that are—union agreements that have restoration of employees?

Mr. **Donahue**. Oh, on restoration of employment, I would again be hazarding a guess but I would guess that more than three-quarters of all collective-bargaining agreements would provide for restoration to employment after pregnancy leaves and I would guess that somewhere in the order of more than 90 percent would provide for restoration to employment after sick leave.

Mr. BARTLETT. Does the typical agreement—how does the typical agreement take care of the substitute or replacement employee during that 18 to up to 26 weeks for medical? That is to say, is there a provision in the typical agreement that the replacement employee can be hired on a temporary basis?

Mr. DONAHUE. Yes. The typical agreement would provide for a category of temporary employees, very often for the exclusion of those temporary employees from participation in the union for some period of time, particularly in the clerical situation where such temporary employees are frequently not required to join the union for up to 3 months or 5 months after employment.

In most cases, the contract provisions would be applicable to the temporary employee, would be approximately the same as to any new employee. And the typical contract provides that the employer maintain as many employees as he or she needs to perform the work, and then for that temporary employee to be released when the other person returns to work.

But may I offer the suggestion that all of our experience with leave policies tells us that there is a great deal of nonreplacement of employees in the workplace. The situation is quite common where an employee is out for a week or two and that employee is not replaced, be it vacation or illness or whatever else.

There is probably a fair percentage of employees who would be away from the job for a month or two or three and might not be replaced, a small percentage but there would be some.

Mrs. ROUKEMA. Would the gentleman yield, please?

Mr. BARTLETT. I would be happy to yield.

Mrs. ROUKEMA. Mr. Donahue, I have no doubt about the validity of your statement in terms of the kinds of union shops that you are speaking of and the large number of employees that you are speaking of and the kinds of jobs that are done there. But I would suggest to you that in smaller business, where there are higher levels of responsibility in terms of management and supervision, it would be a great problem for the employer and the employees who have to fill in, and this would create quite a strain and resulting inefficiencies in those small companies.

I thank my colleague.

Mr. BARTLETT. I thank the gentlelady for the point.

My next question is, can you give us any data or any thought as to why 18 weeks would be the chosen number for parental leave? As I understand it, the legislation would provide for 18 weeks in addition to whatever vacation or sick leave could otherwise be taken or paid.

Mr. CLAY. Well, under the legislation they could use their paid leave as part of the 18 weeks.

Mr. BARTLETT. So, the 18 weeks would be including the paid leave?

Mr. CLAY. If they desired to use the paid leave.

Mr. BARTLETT. Why the 18 weeks? Is that just a figure from medical testimony?

Mr. **Donahue**. I asked the same question. I was told that it had something to do with the judgment of experts as to the bonding period of parents and child.

I was speculating when I came up this morning, it might be somebody's mistaken notion of what half of 9 months is.

Mr. **Bartlett**. I appreciate your candor, Mr. Donahue. One other question, and that is, as I understand, the bill provides for parental leave for either parent, the mother or the father.

Mr. **Donahue**. Yes.

Mr. **Bartlett**. Do most union agreements provide parental leave for either parent, or is this something new that we are exploring?

Mr. **Donahue**. No, they do not. It is a new and growing issue in collective bargaining. I would be hard put to give you any percentages on it, but there is a growing concern in trade union negotiations about parental leave policies.

There has been—I would guess, over the last 15 years or so—development of a fair percentage of collective-bargaining agreements which would provide for some short term parental leave for a father. I mean 3 to 5 days or something of that sort, paid leave.

The extension of that concept to an extended parental leave for the father is only beginning to be developed in collective-bargaining negotiations.

Mr. **Bartlett**. One other question, and that is, can you give us a sense of how you would define small business under this? As I understand the legislation, it defines the small businesses that are exempt anyway of five employees, either part time or full time. Is that a fair definition in your mind, or should it be larger or smaller?

Mr. **Donahue**. Well, I have never accepted the view that anybody should be exempt from social policy in this Nation, and so we have always testified against excluding any group of employees from a particular benefit or coverage under a social policy.

We recognize the realities of legislative enactment and so we have supported the exclusion of five as in this bill.

Mr. **Bartlett**. Then would it be your judgment that this legislation ought to extend to Congress as an institution and to congressional offices?

Mr. **Donahue**. I think that all social legislation should extend to the Congress and should provide coverage to employees of Congress, including the labor laws of the land, yes, sir.

Mr. **Bartlett**. Thank you, Mr. Chairman.

Mr. **Clay**. We don't have any problem with extending this legislation to Members of Congress, but we are not going to do it in violation of the Constitution, which separates the legislative branch from the executive branch. If the gentleman can come up with the proper language for self enforcement by the legislative branch, I will gladly accept the amendment. In fact, I will help him draft such an amendment because I think Congress ought to be covered by it, too.

Mr. Bartlett, in response to one of the questions you asked, I think this might answer it. This is an article that appeared last week in the—this week in the St. Louis Post Dispatch, on April 21. It was a survey—a study made by an independent New York research firm—dealing with this issue. They studied 384 corporations ranging from those with sales of $500 million or less to those with sales of over $2 billion, and they reported that 63 percent of the companies give 5 to 8 weeks disability leave, 32.2 percent give 9 to 12 weeks, and 4.7 percent give 1 to 4 weeks.

They further stated that—and this is the part that might answer your question—that 37 percent of the companies studied offer unpaid leave with a job guarantee to new fathers and adoptive parents, 37 percent of those companies.

Mr. BARTLETT. I thank the chairman for his data, and I would like to see a copy of that and perhaps get the original.

If the chairman would yield for 1 minute.

Mr. CLAY. Yes, go ahead.

Mr. BARTLETT. I would say to Chairman Clay, as you know, some of the issues that you and I have faced together on this subcommittee, we come with such a gulf between us that we just have a different perspective and we sometimes approach it differently.

I would suggest to you, from my perspective, I don't think that is the case with this legislation. I am somewhat impressed by the proposal that you have made. I do have, and would be happy to, and would like to work with the gentleman on some of the specifics to make sure that what we do makes sense for the workers and the employers in the marketplace. But I don't want the chairman to think that I am approaching this with the same sense of a totally different viewpoint than you are approaching it.

Mr. CLAY. Certainly, I want to assure the gentleman that I will work with him to see if we can get unanimity, because this is an issue that I think all of us can support.

Mr. Fawell.

Mr. FAWELL. Mr. Donahue, I perhaps wasn't listening well, but when Mr. Bartlett did ask you the question in reference to union contracts covering parental leave—could you summarize that again? You indicate that this was a relatively new concept insofar as collective bargaining is concerned?

Mr. DONAHUE. No, I think I was responding to Mr. Bartlett's question about the applicability of parental leave to the father, and I say that is a new and developing concept.

I said, I believe, that over the last 15 years or so there has been a growing development in collective bargaining agreements of some paternal leave for the father of a newborn child of 3 to 5 days, until the child is returned to the home and that sort of thing, paid leave for that purpose.

I said that most of our contracts would provide for a kind of parental leave that is specified here, for the return of that person to the job or to a similar job at the end of some period of leave. And I said on the disability side that most of our contracts would provide for wage replacement during a period of disability, either through State law coverage or through negotiated coverage.

Mr. FAWELL. Again, most of it—with regard to childbirth—would be paid leave in the collective-bargaining agreements?

Mr. DONAHUE. For the most part, our collective-bargaining agreements would provide for a woman some period of paid leave for pregnancy or for childbirth, ranging, I would guess, to probably 6 weeks.

Mr. **Fawell**. Is there anything about extending it to the 18-week period—and I understand that from evidence I have heard in regard to comparable bills that it is the view of physicians that there should be a 4-month period if you had the best of all worlds. Do you have many collective bargaining agreements that do extend, whether it is paid or unpaid leave, maternity leave to that length of period?

Mr. **Donahue**. Yes, we do. I would be hard pressed to give you a hard number on it, but it would come within either a separate provision of the collective-bargaining agreement or within the broader provision of a collective-bargaining agreement, allowing an employee to be absent from employment for verifiably good reason for extended illness, for illness of someone that that person cares for, child, parents, whatever.

That is a very common provision, the right to unpaid leave in very special or extraordinary circumstances in the home.

Mr. **Fawell**. Would that include childbirth?

Mr. **Donahue**. Yes, it would.

Mr. **Fawell**. Do you have any idea what percentage of collective bargaining-agreements would extend up to, say, the 4-month period?

Mr. **Donahue**. No, I am sorry, I don't. In the collective bargaining agreements which I know as an employer, we provide for 6 months for that period of childbearing leave.

Mr. **Fawell**. The only other comment that I would have, and I would like your reaction again, is to look to the small employer. Here we are talking about an employer being defined as one as small as five employees.

The 1978 Pregnancy Discrimination Amendments of Title VII, I believe, have 15 employees defined as a small employer. And it also covered part-time employees.

I know you have indicated that apparently you would generally favor an employer being an employer and not to set any limits. But do you have any thoughts—I note that it is 15 employees for the Pregnancy Discrimination Act, and——

Mr. **Donahue**. I must say to you that I regard that number 15 as a step backward for social legislation. In fact, most of our social legislation and most of the coverage of employers for almost any Government requirement has employers of four or more generally being included.

I regard five as a number that you have and I don't know that it is worth the argument, whether you have five or four. Fifteen would disturb me very greatly. Then you are talking about a much larger section of the workforce and you are talking about the people who most need the imposition on that employer of the social responsibility this legislation calls for.

What it demonstrated is that the large corporations have developed some measure of paternal leave. It is the small employer who hasn't done it. The reason you legislate is to make people do what is socially responsible.

It seems to me the higher you push that number of employees, the larger group you are going to exempt from this and that is disadvantageous to them and to the Nation.

Mr. **Fawell.** Yet I assume that conversely, the smaller the employer the more difficult it is to make these kinds of adjustments, too, wouldn't you say?

Mr. **Donahue.** I just don't know. It is not fair to offer speculation on that. I am not a small employer. But it seems to me that the employer of four, five, six, seven, eight people may have a much closer relationship to the employees, he or she may be able to more easily make substitutions, rearrange workforce.

You are talking about, I think, a more informal structure. But I just can't answer.

Mr. **Fawell.** Just one last question. I note the legislation covers part-time employees and no prior length of service. What are your thoughts on that?

Mr. **Donahue.** I am sorry. I didn't hear the first part of your statement.

Mr. **Fawell.** It covers, as I understand it, part time employees and employees with no prior length of service.

Mr. **Donahue.** I would support, obviously, the inclusion of part-time employees. I guess you can make an argument down to some de minimus point, if you talked to me about a 2-hour employee or 4-hour employee. I suppose I would accept some de minimus limit there.

But one of the things which is happening in this Nation is there is enormous growth in part-time employment, and we are at, it seems to me, somewhere near a fifth of the workforce working part time.

I think it is essential that we protect them under our social legislation. I would certainly believe that they should be covered by the legislation.

Mrs. **Roukema.** Would the gentleman yield on that question?

Mr. **Fawell.** I have no further questions.

Mrs. **Roukema.** Do you have any statistics to indicate how many of those people that are part time are women? I would suspect that it is an overwhelming number.

Mr. **Donahue.** I am sure there are such and I am sure it is a large number.

Mr. **Clay.** If the gentlewoman will yield, let's clarify what this piece of legislation covers. It covers permanent part-time employees, not part-time employees. There is a great difference in that.

Mrs. **Roukema.** I am just speculating, this is really a question more appropriately directed to the chamber of commerce or the other business groups that will be coming before us. I wonder whether a change in this policy would affect the number of part-time employment, permanent employment that is available. That has to be a real question to be faced.

A change in policy such as is suggested in this legislation or is mandated in this legislation might adversely affect the number of part-time positions that are open to women in that growing area. I don't know. It is a question that should be addressed to the business groups.

Mr. **Donahue.** I can't quarrel with you, but may I suggest that employers create part-time employment and some employees seek that part-time employment for reasons which are far more substantial than whatever the cost of this legislation might be.

Mrs. ROUKEMA. I hope you are right. I sincerely hope you are right. But I think it is a question that has to be explored.

Mr. CLAY. Mr. Donahue, we want to thank you for your testimony.

Mr. DONAHUE. Thank you, Mr. Chairman.

Mr. CLAY. The next witnesses will consist of a panel, Ms. Eleanor Szanton, Meryl Frank, Irene Natividad, and Bonnie Milstein.

Welcome to the committee, and without objection your entire statements will be included in the record. You may proceed as you desire.

STATEMENTS OF ELEANOR S. SZANTON, PH.D., EXECUTIVE DIRECTOR, NATIONAL CENTER FOR CLINICAL INFANT PROGRAMS; MERYL FRANK, DIRECTOR, INFANT CARE LEAVE PROJECT, YALE BUSH CENTER IN CHILD DEVELOPMENT AND SOCIAL POLICY; IRENE NATIVIDAD, NATIONAL CHAIRWOMAN, NATIONAL WOMEN'S POLITICAL CAUCUS; AND BONNIE MILSTEIN, COCHAIR, CIVIL RIGHTS TASK FORCE, CONSORTIUM OF CITIZENS WITH DEVELOPMENTAL DISABILITIES

Ms. SZANTON. Representative Clay and other members of the Subcommittees on Labor-Management Relations and Labor Standards, I am Eleanor Szanton, and I appreciate the invitation to provide testimony on the importance of parental leave as an investment in strong families.

I speak as the executive director of the National Center for Clinical Infant Programs, a nonprofit organization concerned with the healthy development of children in the first 3 years of life, and of their families.

Members of the national center's board include T. Berry Brazelton, Edward Zigler, former Surgeon General Julius Richmond, and some two dozen other leaders in health, child development and public policy.

As you know, Drs. Brazelton and Zigler have been particularly active in advocating parental leave, and you will hear more on that from Dr. Frank.

Research on infancy is constantly revealing previously unsuspected capacities and vulnerabilities of infants and toddlers. It is also showing us the importance of babies' first relationships and the crucial need to get these off to a good start.

Yet public and private sector policies provide little support for the healthy development of these relationships. Nor are our present policies helping new parents to feel the pleasure and accomplishment of beginning them well.

Let us look at four sets of needs, and the ways in which parental leave represents a beginning step toward meeting these needs.

First, there are the needs of infants in the earliest months of life.

Second, the needs of parents of infants and young children struggling to provide both material and emotional sustenance.

Third are the special needs of adoptive parents and their children.

Fourth, the needs of seriously ill infants and young children, as you have heard already this morning a very moving example of that.

First, in the earliest months of life, infants need special kinds of care. Children require careful nurturing throughout their development.

The wealth of new knowledge about the infancy period tells us that the formation of loving attachments in the earliest months and years of life creates a crucial emotional root system for further growth and development.

How are these attachments formed? Through responsive daily care, thus daily feeding, bathing, diapering, comforting and baby talk are all communications of utmost importance in beginning to give the child the sense that life is ordered, expectable and benevolent.

Breastfeeding and the care of the young infant in the home environment also offer protection from infection as the baby's immune system develops in those earliest months.

In short, these factors affect the baby's cognitive, emotional, social and physical development.

This is not really a piece of fluff, something that would be nice. This is something which now more and more research is relating to later performance in school in terms of numbers of children who are in special education classes, who have turned off from learning or have developed how to delay gratification, to develop basic positive attitudes.

As any parent of more than one child knows, infants vary from birth, and probably earlier, in their temperaments and personalities. When a baby is cared for with sensitivity to his or her individual rhythms and needs, it is more likely that that individual child will develop well. Perfunctory care or neglect may result in intellectual, physical and emotional stunting.

Second, if parents are to give their infants both material and emotional nurturing, parents themselves must be supported in their work and family roles.

We must recognize that supermom is a myth. Dr. Brazelton is deeply concerned that when parents know they have to return to work very early, they seem to guard themselves against making a passionate attachment to this new life and to the new family unit. They seem to be "fitting the baby in."

New mothers and fathers do not become expert caregivers overnight. Developing a mutually satisfying relationship between infant and parent takes time.

Each new child born to a family requires this period of adjustment. Some babies, while not handicapped or low birthweight, are born with temporarily less well developed central nervous systems. They may be unusually fussy or quiet babies.

Families need time to learn how to enhance these babies' health development, to woo these infants into what many experts call a love affair with the world.

It is virtually impossible to predict before birth just how long it will be until a parent or parents really feel confident that they understand this particular baby of theirs.

Once parents and babies do establish a solid attachment to each other, the transition to work and child care is likely to be easier for parents and for the child.

Parents who have cared for their infant for several months are likely to understand a good deal about their child's unique personality, temperament, and the kind of caregiver or setting which will be most appropriate.

Babies, for their part, who have already begun the process of learning to love and trust their parents, are better able to form and to use trusting, warm relationships with other adults.

Thirdly, adoptive parents and their children certainly have special needs. Ideally, parents begin to prepare for their new roles long before the birth of their baby. But while adoptive parents may have waited years for the arrival of a child, they may have only days to prepare for the child that will actually become theirs.

This child may come from an entirely different culture, may have serious medical needs, and may even have previously experienced life as frustrating and painful. Again, time together is essential for parents and child.

Finally, seriously ill children need their parents' presence as well as the family paycheck.

Many infants are born prematurely. They may require extensive hospitalization and special care once they go home.

Learning how to care for these fragile and initially difficult babies takes time. Yet effort is worthwhile. Many studies have shown, and really the research is very solid on this, that those premature infants who go home to a nurturing, responsive environment are likely to develop with few, if any, later learning and other problems.

Again, you see the costs of special education and so on, it really is not just a question of what would be pleasant.

Health professionals are also learning that many medically vulnerable children—for example, those who depend on a ventilator to breathe—can fare as well or better at home than in a hospital or institutional environment, again saving lots of money.

Parents need time to coordinate services in the home and community. They need time to establish or re-establish their special relationship with their child.

As we look at the Parental and Medical Leave Act of 1986, most of us recognize that medical leave that includes coverage for conditions related to pregnancy and childbirth and unpaid parental leave for employees of relatively large enterprises represents only the beginning of a response to a much larger challenge of investment in strong families.

But we don't have to be specialists in infancy to know what an important milestone a first step represents. And we all justifiably rejoice when a child or a nation takes such a crucial step forward.

Mr. CLAY. Thank you.

[The prepared statement of Eleanor Stokes Szanton follows:]

PREPARED STATEMENT OF ELEANOR S. SZANTON, PH.D.

Representative Clay and other members of the Subcommittees on Labor-Management Relations and Labor Standards, I am Eleanor Szanton, and I appreciate the invitation to provide testimony on the importance of parental leave as an investment in strong families. I speak as the Executive Director of the National Center for Clinical Infant Programs, a non-profit organization concerned with the healthy development of children and parents in the first three years of life. Members of the National Center's Board include T. Berry Brazelton, Edward Zigler and Julius Richmond, and some two dozen other leaders in health, child development and public policy. As you know, Drs. Brazelton and Zigler have been particularly active in this area. We have worked very closely with the Yale Bush Center in Child Development and Social Policy's Advisory Committee on Infant Care leave, chaired by Dr. Zigler.

Research on infancy is constantly revealing previously unsuspected capacities and vulnerabilities of infants and toddlers. It is also showing us the importance of babies' first relationships—and the crucial need to get these off to a good start. Yet public and private sector policies provide little support for the healthy development of these relationships. Nor are our present policies helping new parents to feel the pleasure and accomplishment of beginning them well. As Secretary of Labor Brock said in the March 31st Newsweek, "The family is under a great deal of stress; we have to make sure we aren't part of the problem."

Let us look at four sets of needs, and the ways in which parental leave represents a beginning step toward meeting those needs.

First: there are the needs of infants in the earliest months of life.

Second: the needs of parents of infants and young children, struggling to provide both material and emotional sustenance.

Third: are the special needs of adoptive parents and their children.

Fourth: the needs of seriously ill infants and young children.

First, in the earliest months of life, infants need special kinds of care. While children require careful nurturing throughout their development, the formation of loving attachments in the earliest months and years of life creates an emotional "root system" for future growth and development. How are these attachments formed? Through the daily feeding, bathing, diapering, comforting and "baby talk" that are all communications of utmost importance in beginning to give the child the sense that life is ordered, expectable and benevolent. (Breastfeeding and the care of the young infant in the home environment also offer protection from infection as the baby's immune system develops). In short, these factors affect the baby's cognitive, emotional, social and physical development.

As any parent of more than one child knows, infants vary from birth (and probably earlier) in their temperments and personalities. When a baby is cared for with sensitivity to his or her individual rhythms and needs, it is more likely that that individual child will develop well. Perfunctory care or neglect may result in intellectual, physical and emotional stunting.

Second, if parents are to give their infants both material and emotional nurturing, parents themselves must be supported in their work and family roles. We must recognize that "Supermom" is a myth. We must realize that the anecdote I heard at a meeting last year about a woman executive taking a conference call in the hospital the day after giving birth is a "horror story". Dr. Brazelton is deeply concerned that when parents know they have to return to work very early, they seem to guard themselves against making a passionate attachment to this new life and to the new family unit. They seem to be "fitting the baby in."

New mothers and fathers do not become expert caregivers overnight. Developing a mutually satisfying relationship between infant and parent takes time. It takes continued effort by both parents and baby. Each new child born to a family requires this period of adjustment. Some babies, while not handicapped or low birthweight, are born with temporarily less well developed central nervous systems. They may be unusually fussy or quiet babies. Families need time to learn how to enhance these babies' healthy development—to woo these infants into what many experts call "a love affair with the world". It is virtually impossible to predict before birth just how long it will be until a parent or parents really feel confident that they understand this particular baby of theirs.

Once parents and babies do establish a solid attachment to each other, the transition to work and child care is likely to be easier for parents and for the child. Parents who have cared for their infant for several months are likely to understand a good deal about their child's unique personality and the kind of caregiver or setting which will be most appropriate. Babies, for their part, who have already begun the process of learning to love and trust their parents are better able to form—and to use—trusting, warm relationship with other adults.

Third, adoptive parents and their children have special needs. Ideally, parents begin to prepare for their new roles long before the birth of their baby. But while adoptive parents may have waited years for the arrival of a child, they may have only days to prepare for the child that will actually become theirs. This child may come from an entirely different culture, may have serious medical needs, and may even have experienced life as frustrating and painful. Again, time together is essential for parents and child.

Fourth, seriously ill children need their parents' presence as well as the family paycheck. Many infants are born prematurely. They may require extensive hospitalization and special care once they do go home. Learning how to care for these fragile and initially difficult babies takes time. Yet the effort is worthwhile: many studies have shown that those premature infants who go home to a nurturing, responsive environment are likely to develop with fewest later learning and other problems.

Health professionals are also learning that many medically vulnerable children—for example, those who depend on a ventilator to breathe—can fare as well or better at home than in a hospital or institutional environment. Parents need time to coordinate services in the home and community. They need time to establish, or reestablish, their special relationship with their child.

As we look at the Parental and Medical Leave Act of 1986, most of us recognize that medical leave that includes coverage for conditions related to pregnancy and childbirth and unpaid parental leave for employees of relatively large enterprises represents only the beginning of a response to a much larger challenge of investment in strong families. But we don't have to be specialists in infancy to know what an important milestone a first step represents. And we all justifiably rejoice when a child—or a nation—takes such a crucial step forward.

Mr. CLAY. Ms. Frank.

Ms. FRANK. Thank you. I am Meryl Frank. I am the Director of the Yale Bush Center Infant Care Leave Project. Thank you for inviting me here today.

We have been studying the issue of infant care leave for 3 years now, and the project was initiated in response to the changing workforce and changing composition of the family.

We were concerned, we know now that 48 percent of all mothers with infants under 1 year of age are in the workforce and that is a change. In 1970, it was only 26 percent.

What we wanted to do, we had an intuition that there was a problem, and what we wanted to do was to look further into the problem.

The first thing that we did was to initiate a study, a survey, of mothers. What we found was that mothers, all the mothers believed they were getting a leave policy. In fact, they were only getting their sick leave.

We found that parents wanted 6 months, 3 months paid, 3 months unpaid. And we found the schedule that was typical of all young parents, was that the young parents were getting only sick and vacation days, an average of 6 to 15 days.

The ones that got very generous leave, maybe 3 weeks, would be returning to work, these women would be getting up at 5 o'clock in the morning, getting the family ready, taking care of their infant, dropping their 3-week-old infant off at day care, going to work, spending the day at their work, worrying about the quality of their day care, leaving after a full day, picking their infants up, bringing them home, taking care of the family, taking care of the infant, making formula and getting up in the middle of the night for night feeding, and they weren't even physically recovered from pregnancy and childbirth.

We knew that there was a problem and we wanted to know what parents needed, what experts said parents needed, and I think that you covered that very well.

Then we wanted to know what parents were getting.

We did a survey of the public sector, a survey of Federal employees, all 50 States, and of the military. We have studied small businesses, mid-size businesses and large businesses to find out what they are offering.

And we decided we would look abroad to see what was happening there. We did a different kind of survey in Europe than had been done before. We sent a questionnaire, we both actually interviewed consumers, employers and government officials.

We also looked at the Third World, because interestingly enough we found that many countries that we don't look toward for innovative social policy, such as the Philippines, have social policy.

Then we realized that we had to come down to the first issue, we had to balance the needs of the infant, the needs of the mother and the needs of the workforce. So, then we looked at the legal ramifications of the parental leave policy and what the cost might be to the Nation.

We also brought together a number of experts on child development, social policy, law and a number of other fields, to look at our research and make a recommendation.

The recommendations were based upon a number of things, and they included that women need time to physically recover from pregnancy and childbirth, that families need time to provide a stable environment, and that infants need to have that environment.

The committee recommended a 6-month leave, 3-months paid, 3-months unpaid, at 75-percent salary.

They recommended a job guarantee and then a continuation for the entire period.

They considered paying for this program in the same way that many of the State programs are financed, employer/employee contributions.

The committee found that in New Jersey the contributions were about 50 cents per week per worker, and their programs are running in the black, doing quite well.

But the purposes of this committee I would like to talk about are research on what is being offered to parents now.

We found that public sector leaves don't vary very much from private sector leaves. We found that American women have no statutory right to parental leave.

In most States, 40 percent do receive some sort of a leave, but that leave is the sick and vacation leave and disability, and that figure also includes the five States, New York, New Jersey, California, Rhode Island, and Hawaii, that have paid disability programs.

We also found that very few had any further leave beyond the period of disablement, which is—it is 8 weeks.

I want to very quickly give you some characteristics, some broad characteristics of leave policies. They vary widely according to the size of the firm and the number of employees. Many other people use size of sales. We did number of employees and the job title of the worker.

Most Fortune 500 companies do have leave policies. They have a period of physical disablement plus an unpaid leave.

And most small companies don't have an official leave policy.

We found that many do offer leave but they are unofficial.

We found, for instance, that midsize companies—we spoke to a company in New York, a clothing manufacturer, that does offer a leave policy. And as you mentioned, Representative Roukema, it is very difficult to them.

This president of a clothing manufacturer explained to me that he had three designers that were pregnant, what was he going to do, he only had three designers. And he wanted to give them leave.

We had discussed another option, an option such as gradually coming back to work, and he thought that that was workable, that these women would have a leave during the physical—the period that they were—and then afterward they would come in 3 days a week, rather than full time.

We also found that leaves vary according to the position. That is, the job of the employee.

Management and professional, tend to get better leave policies, we believe because the company has made an investment in those people and they want to keep them.

Companies have also told us that they use it now as a recruiting mechanism to get those people.

Recently, there was a forum on work and family and this was a very important issue. People were saying that they were going to be asking their employers if they wanted this type of thing.

Unfortunately, most women are not management and professional workers. Most of them work for small employers and have no guarantees for leave.

A national policy that would put at least a minimum leave policy we support. We support this bill. But we also see this bill as a first step.

We urge you to seriously consider the condition on paid leave. We see that single parent families, the mother of the family will not be able to take advantage of this leave as it stands.

Thank you very much.

Mr. CLAY. Thank you.

[The prepared statement of Meryl Frank follows:]

PREPARED STATEMENT OF MERYL FRANK

The Yale Bush Center Infant Care Leave Project was initiated in response to a growing concern over the increasing pressures faced by employed parents of infants as they struggle to earn a living and to raise their young children. Parents with young children are trying desperately to balance the demands and pleasures of the family with those of work outside the home. This conflict is especially pronounced for the nearly 50% of all married mothers of infants under one year of age who are in the workforce. Many of these women are forced by economic necessity to return to their jobs within a few weeks or months of giving birth, often before they are physically and emotionally prepared to do so.

Families need time to adapt to the presence of a new member and to the demands of parenthood. Mothers must recover physically from pregnancy, labor and childbirth. The United States is the only major industrialized nation without a national policy covering maternity or parental leave. By contrast, more than 100 other countries have legislated coverage that allows parents to leave work for childbirth and some period of child rearing without losing their jobs.

Taking into consideration the changing workforce in the United States, the implications of this lack of policy become apparent. More than 60 percent of American mothers are now in the workforce. The fastest growing segment of this group is composed of women with children under age three.

The Yale Bush Center in Child Development and Social Policy convened the Advisory Committee on Infant Care Leave to evaluate the impact of the changing composition of the workforce on families with infants. During its two-year tenure the Committee has reviewed research on the well-being of infants and their families, the demographic features of the family and the workforce, infant care preferences of parents, and the quality and appropriateness of infant day care. In addition, the Committee reviewed leave policies instituted in nations throughout the world and examined research and financing and implementation mechanisms of leave policy options.

After reviewing the research, the Advisory Committee reached the following conclusions:

1. Nearly 50 percent of all mothers of infants under one year of age are now working outside the home.

2. Irrespective of the changing demographics of the family and the workplace, the family remains the primary base for the well-being and development of children.

3. The majority of parents work because their salaries are vital to the economic survival of their families.

4. Families need time to adjust to the presence of a new family member. The estimates of length of time needed vary according to individual health and family needs.

5. A growing proportion of American families do not have the means to finance leaves of absence from work in order to care for their infants.

6. More than two-thirds of the nations in the world, including almost all industrialized nations, have some provisions for parents of infants to take paid, job protected leaves of absence from the workplace for physical recovery from labor and birth and to care for their newborn infants.

7. Federal policy in the United States prohibits discrimination in employment on the basis of pregnancy. Employers are required to grant leaves to women unable to work due to pregnancy and childbirth on the same basis that they grant leaves for short-term disabilities of any kind. Federal law does not mandate that employers establish new disability benefits or provide leave to parents to care for newborn infants.

The Committee also voiced special concern for low income working parents, as well as those parents with premature, disabled or severely ill infants.

The Committee felt that the "infant care leave problem in the United States is of a magnitude and urgency to require immediate national action." Interim and partial solutions proposed by the Committee included employers' implementation of such policies as: flexible work schedules, reduced work hours, job sharing and child care information and referral services.

However, the basic recommendation and goal were policies for an infant care leave model—policies which would allow employees a leave of absence for a period of time sufficient to enable mothers to recover from pregnancy and childbirth and parents to care for newborn or newly adopted infants. Such a leave would provide income replacement, benefit continuation and job protection. The leave would be available to either mother or father for a minimum of six months, and would include partial income replacement (75% of salary) for three months, up to a realistic maximum benefit sufficient to assure adequate basic resources for the families who need them most. Benefit continuation and job protection would be available for the entire six-month leave period. The Committee recommended that the infant care leave policy be financed through an employer-employee based insurance system, to be administered either by the federal government, the states or by private insurance companies.

EMPLOYER RESPONSES TO THE NEED FOR INFANT CARE LEAVE

The Advisory Committee's recommendation for a national policy to address the needs of parents with infants was in part fueled by the fact that most employed American women have no statutory right to a paid disability or infant care leave, and virtually none have the right to a paid leave beyond the period of physical disablement. American parents must rely most often upon the good will of their employer or supervisor to grant even an unpaid infant care leave. This is simply not an appropriate response to the vital needs of our nation's families. The lack of a standard infant care leave policy in the United States has left the healthy development of our children and our families at the mercy of individual employers. It has led to a situation which is at best confusing, and at worst physically and emotionally damaging.

Bush Center research has found that many parents are confused about just what benefits they are entitled to. Although many of the parents we surveyed believed that they were entitled to a leave, in fact, they were entitled only to their accumulated sick and vacation days, or to a disability leave, not an infant care leave. Kahn and Kamerman of Columbia University suggest that less than half of all private sector employees (including those covered by five state mandated temporary disability insurance programs) are covered by some sort of disability or sickness insurance covering the six to eight weeks necessary for physical recovery from a normal pregnancy and childbirth. Far fewer are entitled to a leave for a period extending beyond pregnancy and childbirth. The proportion and construction of leave policies available to public sector employees differs little from those offered private sector employees.

Leave benefits vary widely according to the size and disposition of the employer, and according to the job title of the employee. Larger firms tend to offer more extensive leave policies. Most Fortune 500 companies offer their employees a disability leave followed by a short, unpaid infant care leave. However, most women are not employed by these firms. Most women are employed by smaller firms which tend not to have official leave policies. Employees of smaller firms are often only entitled to accumulated sick and vacation days, and any leave granted beyond that is up to the discretion of the supervisor. Regardless of the size of the firm, management and professional women tend to be more likely to receive leave benefits than women who are not in professional positions—the majority of women.

A national policy which would insure that all parents were entitled to at least the minimum amount of time necessary for the physical recovery from pregnancy and childbirth and some additional time to establish a healthy environment for infant and family development is vital to this nation's future. However, in order for this policy to have its full effect—to enhance the lives of all American families it must address the need for income replacement. An unpaid leave policy will not adequately address the problems of the many low-income and single-parent families who may most need a leave, but will be unable to afford it.

Mr. CLAY. Next, Ms. Natividad.

Ms. NATIVIDAD. Chairman Clay and members of the subcommittee, thank you for inviting me here today to appear before you.

I am Irene Natividad. I am chair of the National Women's Political Caucus. I am also the mother of a 1-year old.

The National Women's Political Caucus is a national multipartisan organization with 77,000 members in more than 300 State and local caucuses. Our goal for the past 15 years and for the next several years, from what I can see, is equal representation in elective and appointive offices for women, and we speak out on issues that directly concern women.

The National Women's Political Caucus fully supports H.R. 4300. This is a long overdue measure that will greatly benefit women and men in the workplace.

Now, while unpaid leave and reemployment rights are substantial gains, I only wish it were possible to pass a bill that provided some measure of compensation, as well.

As this lady said, this is a significant first step but it is not all of it.

I heartily concur with all the arguments made so far on behalf of this bill, but my primary purpose here today is to stress that parental and medical leave are inseparable. In the words of an old song, "You can't have one without the other."

I understand that there is greater support for parental leave in Congress than there is for medical leave. I believe this arises from not having thought out the consequences of adoption of parental leave without medical leave.

Let me cite a couple of examples. Should only half of this bill be enacted, a parent would be entitled to leave with reemployment rights to care for a sick child, while a colleague absent because of illness or surgery would not be entitled to reemployment rights and even could be fired.

Another example: A woman would be entitled to parental leave for birth of a child, while female and male colleagues unable to work because of serious illness would not be.

Such a state of affairs is neither socially nor economically justifiable. Job security of men and nonpregnant women is just as important as job security for mothers.

Adoption of parental leave protections without medical leave would lead to ill will in the workplace between married women and single women and between women and men as a whole.

Worst of all, parental leave without medical leave would encourage discrimination against women of child-bearing age, who constitute approximately 73 pecent of all the women in the labor force.

Employers would tend to hire men, who are much less likely to claim this benefit. Older women would not have any greater opportunities, as a consequence, because of pervasive age discrimination.

Parental leave without medical leave would be the modern version of protective labor laws, which also required employers to apply different personnel policies to women than men.

Other industrialized Western nations link medical leave for all with maternity leave. They include paid maternity, and in some cases parental leave in their social security laws covering paid leave for sickness. None of them provide maternity or parental leave alone. All are financed by payroll tax and/or general revenue.

As has been mentioned quite frequently, the United States is almost a century behind the Western European countries in its national policy of job security for workers temporarily incapacitated.

Although there were efforts of the American Medical Association in 1916 to secure enactment by the States of temporary disability insurance laws, including pregnancy-related disabilities, none were passed until 1942 when Rhode Island enacted such a law. Four other States have since enacted such laws: California, Hawaii, New Jersey, which was mentioned before, and New York.

Until forced to do so by Federal law, all of the States, except Hawaii, either excluded pregnancy-related disabilities or provided restricted benefits.

We as a society can no longer leave such protection so vital to the welfare of our families to individual employers.

While some employers provide adequate protection, most do not, as indicated by the fact sheets that have been provided by Congresswoman Schroeder and the Congressional Caucus for Women's Issues.

The National Women's Political Caucus heartily endorses enactment of H.R. 4300.

Thank you.

Mr. **Clay**. Thank you.

[The prepared statement of Irene Natividad follows:]

PREPARED STATEMENT OF IRENE NATIVIDAD

Chairmen Clay and Murphy and members of the subcommittees, thank you for the opportunity to appear before you today. I am Irene Natividad, Chair of the National Women's Political Caucus. The NWPC is a national multipartisan organization with 77,000 members in more than 300 State and local caucuses. Our goal is equal representation in elective and appointive office for women and we speak out on issues that directly concern women.

We fully support H.R. 4300, a long-overdue measure that will substantially benefit women and men. I only wish it were possible to pass a bill that provided some replacement of compensation. But, at least, this is a beginning.

My primary purpose is to stress that parental and medical leave are inseparable. In the words of the old song, "You can't have one without the other."

I understand that there is greater support in the Congress for parental leave than there is for medical leave. I believe this arises from not having thought about the consequences of adoption of parental leave without medical leave.

For example, a parent would be entitled to leave with reemployment rights to care for a sick child; while a colleague absent because of illness or surgery would not be entitled to reemployment rights and even could be fired. A woman would be entitled to such leave for birth of a child while women and men colleagues unable to work because of illness would not be. Such a state of affairs is neither socially or economically justifiable. Job security of men and nonpregnant women is just as important as job security for mothers.

Adoption of parental leave protections without medical leave would lead to ill-will in the workplace between married women and single women and between women and men.

Worst of all parental leave without medical leave would encourage discrimination against women of child-bearing age, who constitute approximately 73% of all women in the labor force. Employers would tend to hire men, who would have less legal protection. Older women would not have any greater opportunities because of age discrimination.

Parental leave without medical leave would be the modern version of "protective" labor laws, which also required employers to apply different personnel policies to women than men. In this connection, I would like to insert in the record excerpts from the amicus brief of the ACLU in *California Savings and Loan Association, et al., v. Mark Guerra, et al.*, a case involving a California law providing that women temporarily unable to work because of pregnancy-related disabilities receive up to four months unpaid leave with job security.

A number of organizations concerned with equality for women have signed on to this brief and to another filed by the now legal defense and education fund, both of which argue that the California law is in violation of the pregnancy discrimination act and can be brought into compliance only by extending the benefits of the law to all employees temporarily incapacitated for reasons other than pregnancy.

Other industrialized Western Nations link medical leave for all with maternity leave. They include paid maternity, and in some cases, parental leave in their Social Security laws covering paid leave for sickness. None of them provide maternity or parental leave alone. All are financed by payroll tax and/or general revenue.

The United States is almost a century behind Western European countries in its national policy of job security for workers temporarily incapacitated. "Sickness and maternity" laws originated in Germany in 1883 and were adopted by Austria in 1888, Sweden in 1891, Norway in 1909, England in 1911, France in 1928, Canada in 1940, and Italy in 1943. Parental leave was added later in some of these. (Social Security Programs Throughout the World—1983, Research Report No. 59, U.S. Department of Health and Human Services.)

Although there were efforts of the American Medical Association in 1916 to secure enactment by the States of temporary disability insurance laws, including pregnancy-related disabilities, none were passed until 1942 when Rhode Island enacted such a law. Four other States have since enacted such laws—California, Hawaii, New Jersey, and New York. Until forced to do so by Federal law, all of the States, except Hawaii, either excluded pregnancy-related disabilities or provided restricted benefits.

In summary, the United States alone among western industrialized nations does not have a national policy protecting employees unable to work because of illness or pregnancy-related disabilities. Medical leave as provided in H.R 4300 is a badly needed step toward a national policy. If we care about the welfare of our children, parental leave is a necessity.

We as a society can no longer leave such protection so vital to the welfare of our families to individual employers. While some employers provide adequate protection, most do not as indicated by the factsheets provided by Congresswoman Schroeder and the Congressional Caucus for Women's Issues.

I heartily endorse enactment of H.R. 4300.

Excerpt from Brief of the American Civil Liberties Union, the League of Women Voters, the National Women's Political Caucus, and the Coal Employment Project, Amici Curiae in *California Federal Savings And Loan Association, et al., v. Mark Guerra, et al.*, in the Supreme Court of the United States, October Term, 1985, No. 85-494

In the sex discrimination context, the provision of "special benefits" has "put women, not on a pedestal, but in a cage." *Frontiero v. Richardson*, 411 U.S. at 684 (plurality opinion). Protection is at best only ambiguously beneficial to women; historical evidence reveals compellingly that it has always carried concealed costs. Moreover, any doctrine resting upon the

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[27] Equal protection cases are instructive, even though the legal standard for evaluating pregnancy discrimination claims may differ under Title VII. *Compare Geduldig v. Aiello*, 417 U.S. 484 (1974) *with Newport News*, 462 U.S. 669. (With regard to the questionable continuing vitality of *Geduldig*, see n. 51, *infra*.)

incomparability of the sexes because of biological differences cannot be confined to circumstances which may at first appear "beneficial"; the principle can always then be turned to justify the denial of rights. *See*, *e.g.*, *Geduldig v. Aiello*, 417 U.S. 484.[28]

B. Section 12945(b)(2) Reflects Stereotypical Assumptions And Unnecessarily Relies On Invidious Distinctions

In defending §12945(b)(2) in the Ninth Circuit, the state argued that an employer's failure to grant at least four months disability leave for pregnancy will inevitably have a disparate effect on women.[29] This argument assumes that men and women experience all other disabilities essentially equally, except that in addition women become pregnant. Thus, it is asserted, once the state compensates for pregnancy, men and women can compete on a par.

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[28] California's own statutes treat pregnancy apparently better for this purpose, but worse for others. For example, one statute directed at employers not covered by Title VII appears to permit discrimination against pregnant women in job training programs under certain circumstances (§12945(a)), and another places a six-week maximum only on paid leave for pregnancy (§12945(b)(1)).

[29] Even if this were true, that fact would still not justify this statute, since the remedy for neutral (footnote cont'd)

This argument lacks a factual predicate both in the record in this case,[30] and more generally. For example, even though the average greater longevity of women may provide an apparently "objective" rationale for charging women more for pension contributions or paying them lower periodic benefits, it ignores many other more pertinent and less invidious factors which predict longevity. See Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702, 708-11 (1978). Similarly, the fact that only women become pregnant reveals nothing about the nature and extent of work-related disability or the actual impact of the denial of leave benefits on the two sexes. In fact, the average number of days lost from work due to disability, including childbirth and illness during pregnancy, is remarkably similar for men and women workers. The National Center for Health Statistics has calculated that,

> currently employed persons 17-64 years of age experienced 5.0 days lost from work per person per year. The rates of time lost from work were approximately the same for males and females.... The highest rate of work loss was reported for males 55-64 years of age.[31]

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rules with disparate effects is the elimination of the discriminatory device - not just for the victims of discrimination, but for everyone. E.g., Griggs v. Duke Power Co., 401 U.S. 424 (1971), and see Point IIB, infra.

[30] It is troublesome that, without proof, the state is willing to confirm what has been said all along by the practitioners of discrimination - that pregnancy renders women less reliable, less productive employees, absent more often, more expensive, etc. - i.e., fundamentally different and handicapped.

[31] National Center for Health Statistics, C.S. Wilder, ed., Disability Days, United States, 1980. Vital and Health Statistics. Series 10 - No. 143, DHHS Pub. No. (PHS) 83 - 1571 (1983) at 6 (hereafter "Disability Days"). For purposes of this study, women on (footnote cont'd)

Men workers experience an average of 4.9 days of work loss due to illness or injury per year while women experience 5.1 days per year. This extremely small difference of 0.2 days makes sex the least useful predictor of risk of work loss due to disability. All of the other population characteristics researched by the National Center for Health Statistics, including occupation, age, race, place of residence, income, and perceived health status, are better predictors than sex of days lost from work due to disability.[32]

This general proposition holds true even during the prime childbearing years. In the age group 17-24, men experience 4.8 days lost from work per person per year, while women have only 4.4 days. In the age group 25-34, the figures are 4.9 days for males and 5.2 days for females.[33]

Numerous factors influence disability occurrence. For example, lower income men workers experience more disability than lower-income women workers,[34] men lose more

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pregnancy leave were considered to be currently employed. Even assuming that some women voluntarily or involuntarily leave their jobs because of or in anticipation of pregnancy, the disability rates for men and women ages 17-64 are still remarkably similar. Among persons not in the work force, men experienced 14.8 days of bed disability compared to 11.5 days for women and men had 45.8 days of restricted activity compared to 30.5 for women. Of persons currently unemployed, men experienced 8.0 days of bed disability compared to 9.5 for women, and men had 30.7 days of restricted activity compared to 25.3 for women. (Id. at 42.)

[32] Even if the generalization were true that, on average, women are disabled from work more than men, it would still be impossible to predict which women (and men) will be disabled more, or less, than average. The generalization thus serves to obscure the important fact of individual variability. Cf. Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702.

[33] Disability Days, supra n. 31, at 39.

[34] Work disability rates rise as income decreases, (footnote cont'd)

work days from all injuries than women,[35] and they suffer more job-related injuries and diseases.[36] The number of disability weeks (from any cause, including pregnancy) was greater for men than women in a study of office and sales employees ages 17-64.[37]

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[35] Per 100 currently employed persons, men lost 128.9 days per year from injuries while women lost only 68.8 days. M. Rudov and N. Santangelo, Health Status of Minorities and Low Income Groups, DHEW Pub. No. (HRA) 79-627 (1979), p. 155, (hereafter "Rudov and Santangelo").

[36] U.S. Department of Labor, An Interim Report to Congress on Occupational Diseases (1980), Table I-16, 49-50.

[37] "Variation in Duration of Disability Among Metropolitan Employees," 62 Metropolitan Life Ins. Co. Stat. Bull. (July-Sept., 1981) p.9. In this study women ages 17-44 have more annual days of disability than do males of the same age, but men ages 45-64, experience more disability days. The same pattern exists for average duration of disability in office workers, but among sales personnel males of all ages experience longer disabilities than do females. 62 Metropolitan Life Ins. Co. Stat. Bull. (Jan.-Mar. 1981), pp. 5-6, Tables 1,2.
(fo[illegible]ote cont'd)

Even though pregnancy and childbirth always entail some period of disability, that does not prove that women as a class require disability leave more than men. In certain work environments in which males and females aged 40-65 predominate, the disability rate may be greater for men than for women, and those disabilities experienced by women are unlikely to be related to pregnancy.[38] In workplaces with a younger population, pregnancy-related disabilities might predominate. The pattern may vary by place of employment, locality, geographical region, age, ethnic

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experience longer disabilities than do females. 62 Metropolitan Life Ins. Co. Stat. Bull. (Jan.-Mar. 1981), pp. 5-6, Tables 1,2.

[38] Of all women aged 55-59 in the workforce in 1978, almost 70% had had their last child by age 34; more than 90% had had their last child by age 39. U.S. Department of Commerce, Bureau of the Census. Population Characteristics 6, Table 15 (1979).

background, and other factors.[39] That we have tended to view pregnancy as the single overriding factor in measuring the need for disability benefits speaks only to the power of tradition and stereotypes: the time-honored tendency to use sex-based distinctions in the place of other more functional categories,[40] and the view of pregnancy as a uniquely incapacitating "delicate condition" and women as frail, passive and needy of protection.

Moreover, §12945(h)(2) does not begin to address other equally or more pressing needs of working women; it draws attention away from them by creating the illusion that "women's problems" have been solved. But the average woman bears only two children, and working women have fewer children than non-working women.[41] Pregnancy, while experienced by many or even most women, is still an event which occurs infrequently in the lives of individual women, and is physically disabling for a limited time period.[42] But all workers experience various unpredictable temporary conditions which prevent them from working, and parents of both sexes need leave time to meet the needs of their dependents.[43] Poor people disproportionately experience many chronically disabling conditions.[44] The availability of pregnancy-specific leave benefits is irrelevant to them, to women who do not work during pregnancy,[45] and to women beyond childbearing age. Mothers who rely in whole or in part on a spouse or family member's wages would be better served by benefits covering that wage earner in the event of any disability.[46]

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[39] For example, blacks experience sickle cell disease, and are at greater risk for hypertension. *See* Rudov and Santangelo, *supra* n. 35, at 103. Members of other ethnic groups may experience increased risk for certain conditions as a result of genetic factors. R. Severo, "Genetic Tests by Industry Raise Questions On Rights of Workers," *N. Y. Times*, Feb. 3, 1980. Age, diet, exercise, work environment, and personal habits may also affect the incidence of temporary disability.

[40] Race-based tables were once common in the insurance industry, and were supported by statistical data correlating race with increased risk for the insured event. M. James, *The Metropolitan Life: A Study In Business Growth* 338 (1947), G. Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy* 316-17, 955, 1262-63 (1944). They have been abandoned not only for legal and policy reasons, but also because functional classifications work as well.

[41] U.S. Department of Commerce, Bureau of the Census, *American Women: Three Decades of Change* (1983) pp. 6-8.

[42] In a study of the annual incidence of disability among female Metropolitan Life Insurance Co. office and sales personnel ages 17-64, pregnancy represented about 20% of cases for office workers and 13% for (footnote cont'd)

If pregnant women are disadvantaged because employers do not guarantee disability leave, it is not because they are disproportionately

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sales workers. Pregnancy accounted for 25% of total days of disability taken by office workers and 13% for sales workers. Pregnancy-related disability represents a greater proportion of disability days and incidence among women 17-44, and is neglible for women ages 45-64. 62 Metropolitan Life Ins. Co. Stat. Bull. (Jan.-Mar. 1981), pp. 5-6, Tables 1,2.

[43] Discrimination against either parent can equally injure dependent family members. Califano v. Westcott, 443 U.S. 76 (1979), invalidated a provision of the Social Security Act which keyed benefits to the sex of the unemployed parent, noting that the sex of the unemployed breadwinner parent was irrelevant to the legislature's goals: "[i]n either case, the family's need will be equally great." Id. at 88. See also Weinberger v. Wiesenfeld, 420 U.S. 636 (1975).

[44] Rudov & Santangelo, supra n. 35, at 135-37.

[45] Only 1.1% of blue collar women and 2.9% of sales and clerical workers over the age of 30 expected to bear a child within a year. U.S. Dep't of Commerce, Bureau of the Census, "Fertility of American Women: June 1977," Current Population Reports, Series P-20, No. 325, Table B at 3 (1978). Other women voluntarily leave the labor force during or in anticipation of pregnancy. U.S. Dep't of Commerce, Bureau of the Census, "Fertility of American Women: June 1980," Current Population Reports, Series P-20, No. 365, (1981).

(footnote cont'd)

[46] Indeed, in recognition of this problem, a bill has been introduced in Congress to provide all workers the right to unpaid leave of absence with job security for illness, temporary physical incapacity, or work loss because of the need to care for a newborn, newly-adopted or seriously ill child. Parental and Medical Leave Act of 1986, H.R. 4300. The impetus for this legislation derives in substantial part from the concern of some legislators that sex-specific measures, like §12945(b)(2), are not harmonious with Title VII and, in any event, are an inadequate response to the problems encountered by all employees.

disabled, but more likely because their requests to return are discriminatorily refused. The history of exclusionary treatment based on pregnancy is too recent to be easily extinguished as a factor in employer decisions. Stereotypes about the greater unreliability of mothers of infants or young children still abound.[47] Left to their discretion, employers may well be less likely to accommodate the disabilities of pregnancy than those of other illnesses, not because of the uniqueness or special needs of pregnancy but because of a reluctance to employ new mothers. *E.g.* *Phillips v. Martin Marietta Corp.*, 400 U.S. 542. The notion that women need special treatment because of biological differences thus masks covert but intentional gender discrimination against women both as childbearers and parents. While the legislature is free to offer solutions to such discrimination, it must do so in a non-discriminatory fashion. In the long run women will benefit more from laws which prohibit *any* discrimination on the basis of sex than those which require preferential treatment and reinforce invidious stereotypes.[48]

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[47] *See*, generally, NAS Study, *supra* n. 12.

[48] "[T]he assumption that women will become pregnant and leave the labor market is at the core of the sex stereotyping resulting in unfavorable disparate treatment of women in the workplace." S. Rep. No. 95-331, 95th Cong., 1st Sess. 3 (1977) (hereafter "S. Rep. 95-331"), *reprinted in* Legislative History of the Pregnancy Discrimination Act, 1978 (committee print prepared for the Senate Committee on Labor and Human Resources) at 40 (1979) (hereafter "Leg. Hist.").

Mr. Clay. Ms. Milstein.

Ms. Milstein. Thank you, Mr. Chairman and members of the committee. I congratulate you on holding this hearing today, and I appreciate your having invited me to testify.

I am a staff attorney with the Center for Law and Social Policy, and I am speaking here today in my capacity as cochair of the Civil Rights Task Force of the Consortium of Citizens with Developmental Disabilities.

The members of that task force are listed on the front of my testimony, and include the American Association on Mental Deficiency, [ACLD], an Association for Children and Adults with Learning Disabilities, the Association for Retarded Citizens, the Disability Rights, Education, and Defense Fund, the Epilepsy Foundation of America, the Mental Health Law Project, the National Alliance for the Mentally Ill, the National Association of Developmental Disability Councils, the National Association of Protection and Advocacy Systems, the National Mental Health Association, the National Society of Children and Adults With Autism, and the United Cerebral Palsy Associations.

The Parental and Medical Leave Act, which I will refer to as PMLA, is important legislation for all employees, including employees with disabilities and employees who are parents of minor and adult children with disabilities.

Contrary to popular misconceptions, work is a vital part of the lives of many people with disabilities and, in turn, individuals with disabilities comprise a vital part of the American labor force.

Historically, society viewed disability as an illness. The perception was that people with disabilities needed to be cared for and cured. They were not considered able to fully participate in American life, and this damaging stereotype fostered the notion that such people could not work.

Large and small companies across the country are increasingly discovering the population of individuals with disabilities is a pool of hard working and productive employees.

A combination of changing social attitudes, new job patterns and increasingly available technology is helping more and more companies to fill crucial job positions with people who have a wide variety of disabilities.

Numerous studies have demonstrated that the productivity, reliability and above average safety records of such workers is indisputable.

For example, a survey of employees at the Du Pont Corp. showed that workers with disabilities excelled in all areas.

The PMLA provides necessary job protections for employees of all sorts. Traditional leave policies focus on sick leave that is necessary to restore an employee to health.

The PMLA adopts a more reliable focus by acknowledging the distinction between sickness and disability.

For example, an employee with arthritis may require periodic physical therapy. That physical therapy will not eliminate the employee's arthritis. It will, however, make it possible for the employee to function more comfortably and more effectively.

Similarly, if an employee's child has cerebral palsy and requires orthopedic devices to assist his or her mobility, the time necessary to acquire and to adjust to the braces will not fit under the traditional notion of sickness and health, but establishes as much a need for a parent to be able to obtain the leave necessary to help his or her child as would a child's contracting chicken pox.

The current unavailability of the kind of leave that the PMLA will provide has contributed to the astronomical unemployment rate among people with disabilities.

Experts approximate that 16 percent of the American population, or 36 million people, have disabilities.

It is essential to realize that most of the working age individuals who comprise this number can work. Of the 36 million, roughly 11 million, or 30 percent, are gainfully employed, and at least another 15 million of these Americans could work if given the opportunities to do so.

This legislation will certainly not succeed alone in reducing the unemployment rate among people with disabilities and among parents of disabled children, but it will address one of the underlying causes of such unemployment.

No longer will employees be terminated from their jobs while tending to their own and their families' health needs. No longer will many productive workers be forced to depend on government benefits due to the lack of adequate medical leave protections.

The needs of employees with disabilities are not identical to those of other employees.

Leave needs vary depending on the individual's type of disability. For example, a physically impaired person will have different medical needs from those of a person with a neurological disorder, such as epilepsy.

In this light, the leave provided by the PMLA amounts to little more than essential, reasonable accommodation, which is crucial in order for many people with disabilities to integrate themselves into the workforce and to achieve optimum independence and security.

Working parents of dependent daughters and sons also need this type of leave policy.

Under the parental leave section of the PMLA, parents are guaranteed a minimum of 4 months of unpaid leave every 2 years for the birth, adoption or serious health condition of a daughter or son.

For many years, these families have been forced to bear unnecessary hardships because uniform, reasonable leave policies which allow for leave vital to the care of a dependent daughter or son with disabilities do not exist for the vast majority of employees.

Parents and parent organizations within the disability community believe that this situation is one of the many causes of the difficult economic and emotional problems faced by these families.

The income of a family with a disabled member is nearly three times as likely to fall below the federally defined poverty level. This makes such families as a class, including all racial/ethnic groups, the poorest minority in our Nation.

Though the parental leave contained in the PMLA is unpaid leave, it will still aid these parents in their effort to meet the health needs of their daughters and sons while maintaining their jobs and the economic and family security that those jobs guarantee.

By recognizing this need, the authors of the PMLA have recognized important demographic changes in American society.

Families are no longer institutionalizing their children who have disabilities. The overwhelming majority of families now keep their children at home.

A major reason for this shift away from institutionalization is that study after study has proved the debilitating effects of institutionalization and its costliness.

On the other hand, the individual with disabilities who is allowed to remain in a family environment has a much greater likelihood of learning the skills necessary for independence and a fulfilling life in the community.

The Congress has enacted several laws that recognize that the pathology of disability is not in the individual, but rather is in the physical, social, political and economic environment that has limited the choices available to people with disabilities.

The solution to these problems is not medical intervention alone, but more self help initiatives leading to the removal of barriers and to the full participation of people with disabilities in society.

The PMLA is one such solution. It will guarantee employees their job rights while reinforcing basic American standards of job responsibility and family stability. It will reinforce the intent of other Federal and State legislation which promotes the independence of people with disabilities, and it will be cost effective.

As several studies have noted, employers can no longer count on a continuing supply of workers. They must, therefore, endeavor to make employment more attractive.

Most often, these considerations prompt the initiation of benefits that reinforce the relationship between employment and the well-being of the worker and his or her family.

The flexibility that the PMLA will introduce on a national and consistent basis will benefit workers, employers, and taxpayers.

Since this legislation will affect work standards and labor policy, those whom we represent have an interest in seeing that this bill addresses their general concerns as American workers and their particular needs and concerns as persons with disabilities and as parents of those with disabilities.

We look forward to working with this subcommittee toward the enacting of the Parental and Medical Leave Act.

Thank you, Mr. Chairman.

Mr. CLAY. Thank you.

[The prepared statement of Bonnie Milstein follows:]

PREPARED STATEMENT OF BONNIE MILSTEIN

Mr. Chairman and Members of the Committee: We congratulate the committee on holding this hearing today, and we appreciate the opportunity that you have given us to testify.

The Parental and Medical Leave Act (PMLA) is important legislation for all employees, including employees with disabilities and employees who are parents of minor and adult children with disabilities. Contrary to popular misconceptions, work is a vital part of the lives of many people with disabilities, and, in turn, individuals with disabilities comprise a vital part of the American labor force. Historically, society viewed disability as an illness. The perception was that people with disabilities needed to be cared for and cured. They were not considered able to fully participate in American life. This damaging stereotype also fostered the notion that people with disabilities could not work.

Large and small companies across the country are increasingly discovering the population of individuals with disabilities as a pool of hardworking and productive employees. A combination of changing social attitudes, new job patterns, and increasingly available technology is helping more and more companies to fill crucial job positions with people who have a wide variety of disabilities. Numerous studies have demonstrated that the productivity, reliability, and above average safety records of such workers. For example, a survey of employees at the DuPont Corporation showed that workers with disabilities excelled in all areas. In 1981, supervisors rated 92% of their employees with disabilities as average or above in performance of job duties, 85% average or above in attendance, and 96% average or above in job safety.

The PMLA provides necessary job protections for employees with disabilities. Traditional leave policies focus on sick leave that is necessary to restore an employee to health. The PMLA adopts a more reliable focus by acknowledging the distinction between sickness and disability. For example, an employee with arthritis may require periodic physical therapy. That physical therapy will not eliminate the employee's arthritis. It will, however, make it possible for the employee to function more comfortably and more effectively. Similarly, if an employee's child has cerebral palsy, and requires orthopedic devices to assist his or her mobility, the time necessary to acquire and to adjust to the braces will not fit under the traditional notion of sickness and health, but establishes as much a need for a parent to be able to obtain the leave necessary to help his or her child, as would a child's contracting chicken pox.

The current unavailability of the kind of leave that the PMLA will provide has contributed to the astronomical unemployment rate among people with disabilities. Experts approximate that 16% of the American population, or 36 million people, have disabilities. It is essential to realize that most of the working-age individuals who comprise this number can work. Of the thirty-six million individuals with disabilities, roughly eleven million (30%) are gainfully employed, and another fifteen million of these Americans could seek if given opportunities to do so.

This legislation will certainly not succeed alone in reducing the unemployment rate among people with disabilities, and among parents of disabled children, but it will address one of the underlying causes of such unemployment. No longer will employees be terminated from their jobs while tending to their own and their families' health needs. No longer will many productive workers be forced to depend on government benefits due to the lack of adequate medical leave protections.

The needs of employees with disabilities are not indentical to those of other employees. For example, studies indicate that on the average, people with a chronic activity limitation account for approximately 30% of all visits to physicians, 40% of all discharges from short-stay hospitals, and 58% for all days spent in such facilities. Therefore, the need for basic protected job leave may be greater in real terms among some employees with disabilities. Furthermore, leave needs vary depending on the individual's disability. For example, a physically impaired person will have different medical needs from those of a person with a neurological disorder, such as epilepsy. In this light, the leave provided by the PMLA amounts to little more than essential, reasonable accommodation, which is crucial in order for many people with disabilities to integrate themselves into the workforce and to achieve optimum independence and security.

Working parents of dependent daughters and sons also need this type of leave policy. Under the parental leave section of the PMLA, parents are guaranteed a minimum of four months of unpaid leave every two years for the birth, adoption, or serious health condition of a daughter or son. For many years, these familes have been forced to bear unnecessary hardships because uniform, reasonable leave policies which allow for leave vital to the care of a dependent daughter or son with disabilities do not exist for the vast majority of employees. Parents and parent organizations within the disability community believe that this situation is one of the many causes of the difficult economic and emotional problems faced by these families.

The income of a family with a disabled member is nearly three times as likely to fall below the federally-defined poverty level as the average family's. This makes such families as a class (including the disabled of all racial/ethnic groups) the poorest minority in our nation. Though the parental leave contained in the PMLA is unpaid leave, it will still aid these parents in their effort to meet the health needs of their daughters and sons while maintaining their jobs and the economic and family security those jobs guarantee.

By recognizing this need, the authors of the PMLA have recognized important demographic changes in American society. Families are no longer institutionalizing their children who have disabilities. The overwhelming majority of families now keep their children at home. A major reason for this shift away from institutionalization is that study after study has proved the debilitating effects of institutionalization and its costliness. On the other hand, the individual with disabilities who is allowed to remain in a family environment has a much greater likelihood of learning the skills necessary for independence and a fulfilling life in the community.

The Congress has enacted several laws that recognize that the pathology of disability is not in the individual, but rather in the physical, social, political, and economic environment that has limited the choices available to people with disabilities. The solution to these problems is not medical intervention alone, but more self-help initiatives leading to the removal of barriers and to the full participation of people with disabilities in society.

The PMLA is one such solution. It will guarantee employees their job rights while reinforcing basic American standards of job responsibility and family stability. It will reinforce the intent of other federal and state legislation which promotes the independence of people with disabilities, and it will be cost-effective.

As several studies have noted, employers can no longer count on a continuing supply of workers. They must therefore endeavor to make employment more attractive. Most often, these considerations prompt the initiation of benefits that reinforce the relationship between employment and the well-being of the worker and his or her family. The flexibility that the PMLA will introduce on a national and consistent basis will benefit workers, employers and taxpayers.

Since this legislation will affect work standards and labor policy, those whom we represent have an interest in seeing that this bill addresses their general concerns as American workers and their particular needs and concerns as persons with disabilities and as parents of those with disabilities. We look forward to working with this subcommittee towards the enactment of the PMLA.

Mr. CLAY. Ms. Frank, it is my impression that the problem that many of the small- and medium-size employers face is that they have just not considered parental or medical leave policies and rejected them, but rather they have just not confronted the issue or they have established some informal——

Ms. FRANK. That is right. They told us that they don't have a leave policy because they haven't needed one until this point. And now, with so many women in the work force, and who want to return to work and need to return to work, they now have to develop some sort of a policy.

Mr. CLAY. You stated that you made a survey or study of foreign countries and found most of them to have already adopted this same type of legislation. Why do you think that the United States is so far behind in this area?

Ms. FRANK. That is a difficult question. I think that from what they have told us, that they seem to have a different view on what is the community's responsibility for the children is, and in the United States we have tended to have more of an individual view of the family raising children and being responsible for the children. And, in fact, as I said earlier, only in 1970, that only 26 percent of women with infants under 1 year of age were in the work force. Now we are looking at 48 and 49 percent, and all indications are that that will continue.

Mr. CLAY. Do you recall how many other nations have parental and——

Ms. FRANK. Two-thirds of all the nations of the world have leave policies. All other industrialized nations do and most Third World nations do.

As a matter of fact, recently I read in the paper that Yemen just adopted a paid parental leave policy.

Mr. CLAY. What about Libya? [Laughter.]

Ms. FRANK. I don't know.

Mr. CLAY. Ms. Milstein, we have heard some concerns about the time that it would take to train, to recruit, and train a replacement during this abbreviated period. Is that a real valid concern?

Ms. MILSTEIN. I think that the testimony from Mr. Donahue of the AFL-CIO accurately represents the organizations on whose behalf I testify. It is our understanding that the cost of replacing is well within budgets of employers and would not be disruptive.

Mr. CLAY. Thank you.

Mrs. ROUKEMA.

Mrs. ROUKEMA. Mr. Chairman, I have no questions for this panel. I think they have presented some interesting material. But I do have a statement to make, as clarification of my comments on bonding at the beginning.

I greatly respect what Dr. Szanton has said on the subject and Ms. Frank, from the Yale Bush Center. Everything you have said about the mutually satisfying relationship being important to early cognitive development and emotional development is absolutely correct.

My comments on bonding were directed more to the timeframe. I think the 18 months is a cruel hoax; 18 months—and I am sure Dr. Brazelton would agree—I am sorry, 18 weeks, I am talking about 18 weeks.

Eighteen weeks, and I am sure Dr. Brazelton would agree, has really no relationship to bonding. It is so minimal, it should not be part of this discussion.

I think the discussion has to evolve around other issues, economic, social welfare in terms of women's rights, and the disability aspects of maternal leave. I think the bonding has to be left out of it because I think unless you are willing to admit—and I hope you are not—that what you really need for bonding is, as some experts would say, 2 years, some would say 3, and some very conservative people would say the woman should stay at home with her preschool child, which I don't want to get into now. It is not appropriate because the economic questions that are involved here as to why women are out in the work force are paramount.

But I just wanted to be clear, I agree with everything you said about the importance of bonding. I just think the 18 weeks is a cruel hoax, so unfortunately I just have to eliminate that part of the debate from our consideration.

Mr. CLAY. Well, you can amend the bill to make it 2 years. [Laughter.]

Mrs. ROUKEMA. And that would be, I think, what is known in this House as a gutting amendment.

Mr. CLAY. Well, I would support that gutting amendment.

Mrs. ROUKEMA. But nobody else would, Mr. Chairman.

Ms. SZANTON. I did not recommend any specific——

Mrs. ROUKEMA. No; I understand.

Ms. SZANTON. As a matter of fact, there were people on the committee that said you can't, for sometimes it is shorter, for sometimes it is longer.

Mrs. ROUKEMA. I understand that, and you are completely professional and I wanted to commend you for your professionalism. I feel rather deeply on this subject. As a mother of three and the wife of a psychiatrist who has had extensive work with children, I agree with you completely. I just think, unfortunately, we have to separate the issue from the consideration of this bill.

Mr. CLAY. Mr. Hayes.

Mr. HAYES. No questions, Mr. Chairman.

Mr. CLAY. Mr. Bartlett.

Mr. BARTLETT. I would like to commend the panel for their rather excellent testimony. I have a couple of questions.

First, how would you view and comment on the need to require by Federal law paternity leave of an equal amount to maternal leave for any or all?

Ms. FRANK. Well, actually, the reason that we called our project the infant care leave project rather than maternity is to talk about what the purpose of the policy would be. We think that it is important to encourage more fathers to care for their infants, but we also recognize there is a period of disability in the beginning that would be exclusively for the mothers. But we think it would only be healthy for more fathers to be involved.

Ms. SZANTON. I would agree with that, though I don't pretend to be really competent on the niceties of what would be economically feasible. But I certainly do feel that it is a very valuable step that fathers have become much more seeing themselves more involved in their new babies' lives.

Ms. MILSTEIN. Mr. Bartlett, I would only add one thing. You and I have spoken on other disability issues and you are certainly one of the better informed Members of Congress on disability issues. And as such, you understand that because the PMLA allows parental leave for serious medical condition of a child, that it is every bit as much a father's responsibility as it is a mother's to help a disabled child with obtaining the kind of care and therapy and the kind of support that he or she might need, getting to the school, staying in school.

So, from that perspective, there is absolutely no reason why there should be a distinction for parental leave.

Ms. NATIVIDAD. Let me also add that this is also a new social phenomenon, a greater desire on the part of all parents to want to take time off when a child is born. I know that when my son was born, my husband wanted to take some time off and he could not. There was no company policy covering that.

Mr. BARTLETT. Thank you.

So, your testimony basically is to try to maximize the options for the benefit of the family and specifically the infant.

Thank you, Mr. Chairman.

Mr. CLAY. Thank you.

Mr. Fawell.

Mr. FAWELL. Just one question. Ms. Natividad, you mentioned that you are the mother of a 1-year-old. Were you employed, were you able to obtain parental leave?

Ms. NATIVIDAD. I worked for the State of New Jersey, for a State college. I was allowed unpaid leave up to 3 months and paid leave that would be covered by my accumulated sick days and vacation days.

However, because I was part of management, I headed up a center for continuing education, which was like another school within the college, my vice president to whom I reported didn't feel he could afford to give me 3 months time. I went back to work after 1 week.

Mr. **Fawell**. Do you think that there would be more of a problem of potential discrimination against employees who were not, as you were, higher in management, but let's say might be in a secretarial position? With a bill like this and an employer knowing the potential of leave coming up and disrupting his or her search for such material service, there might be increased discrimination by——

Ms. **Natividad**. Against women?

Mr. **Fawell**. Against women.

Ms. **Natividad**. Well, that is why we are supporting a general disability bill that includes a parental bill.

Let me also quote some numbers for you. The National Center for Health Statistics calculated that currently employed persons 17 to 64 years of age, experience 5 days lost from work per person per year.

The rate for time lost from work was approximately the same for male and female. The highest rate of work lost was reported from those 55 to 64 years of age.

So, what I am pointing out here is that even given pregnancy, I suspect that the amount of time lost by men and women would be the same.

Mr. **Fawell**. Thank you.

Mr. **Clay**. If there are no—yes?

Ms. **Szanton**. Could I just make one response also to Mrs. Roukema?

I wanted to say that there really is—that we were not implying that just the first few weeks if people were together would make all the difference. Obviously, the process of love and compassion goes on through the years.

We are saying, I think, that there is a qualitative difference there at the very beginning and that it is possible to get off to the wrong start because parents and children don't—if that is all you have to do.

Mrs. **Roukema**. I understand, Doctor, and I agree with your premise. I think it is clearly established in developmental sciences and I do agree with that. Your testimony was excellent.

I simply made the point that for purposes of this bill I think we have to separate the issues.

Mr. **Clay**. If there are no further questions, we thank the witnesses.

Mr. **Clay**. The next witnesses will consist of a panel, Ms. Jeanne Kardos, Barbara Inkellis, Irma Finn Brosseau, and Susan Hager.

Congressman Hayes will take the Chair.

Mr. **Hayes**. You may have already been advised by the chairman of the subcommittee that we have copies of your testimony and the entire testimony will be entered into the record. If you want to deal with just the highlights of it, it would be appreciated by this committee.

So, we will start with you, Ms. Kardos.

STATEMENTS OF JEANNE KARDOS, DIRECTOR OF EMPLOYEE BENEFITS, SOUTHERN NEW ENGLAND TELEPHONE; BARBARA INKELLIS, GENERAL COUNSEL, DISCLOSURE INFORMATION GROUP; IRMA FINN BROSSEAU, EXECUTIVE DIRECTOR, BUSINESS AND PROFESSIONAL WOMEN'S FOUNDATION; AND SUSAN HAGER, PRESIDENT, HAGER, SHARP & ABRAMSON, INC., REPRESENTING THE U.S. CHAMBER OF COMMERCE

Ms. KARDOS. Mr. Chairman and members of the subcommittee, thank you for allowing me to appear before you today.

My name is Jeanne Kardos. I am director of employee benefits for the Southern New England Telephone Co., which operates primarily in Connecticut and employs 14,000 employees.

This is a subject that is especially near and dear to my heart, not only as a benefits administrator but as a mother of two children.

I have to say that both my company and I personally are very much in favor of providing parental leave and disability programs.

We have had maternity disability and child care leaves for nearly 10 years. Because you have been asking some questions about statistics, I have decided to insert them wherever I can here while describing these benefit plans.

Approximately half of our employees are women, and about 67 percent of them, as I recall, are of child-bearing age. That is about 4,700 employees who could have another child. I don't know how many of them are married.

Last year we had 235 babies, which represents a 5-percent population explosion, if that is what it is. Let me briefly highlight how those mothers used our programs.

We provide an unpaid leave prior to disability, and 60 of our 235 took advantage of that.

This is then followed by paid leave with full benefits from the day of delivery until the disability is over.

One hundred ninety-nine took advantage of our unpaid natural child care leave for parents, which lasts for up to 1 year and has a 6 months guaranteed reemployment provision.

Additionally there were six leaves for adoptive situations.

We also have an unpaid personal leave which allows parents to care for sick family members, children, spouse, parents, whatever. I don't, unfortunately, have a statistic on that.

When these parents do come back to work, there is no loss of seniority or benefit entitlement that they have earned.

I do know that of the 235 that had babies, only 30 did not return to work at the end of their leaves.

We have also tried to make their return to the company as flexible as possible, making that transition as smooth as possible. We encourage supervision to try to work with the employees and wherever part-time work or flexible work hours can be accommodated in their job, we do that.

These benefits, by the way, are available to all part-time and full-time permanent employees.

In 1984, we took one additional step in recognition of the need that has grown in our area and I think across the country, and that is we have helped our employees to start a day care center in

New Haven which is where approximately half the employees work.

This was primarily in recognition of the critical short supply of infant care. Our day care center now takes children from the age of 3 months through kindergarten, and we are very pleased to say that it is operating at full capacity. It is financially independent of the company. It is totally run and overseen by a board of directors composed of employees or their spouses.

Some of my colleagues in other businesses think I have gone too far in providing these benefits to employees after childbirth, but let me tell you why we do this, because this I think is the crux of the matter.

We have recognized that women with children, with small children, are here in the workforce to stay. And we want them to stay in the workforce.

Once you get by that hurdle, everything else is easy. Whether you are a single parent or not, they have special needs and I would submit that those needs that have evolved for the single or married parents are just as important to them as the needs that have caused our other benefit plans to evolve, such as medical benefits, pensions or savings plans.

We have got to admit the fact that there is a need and then provide the benefit programs to cover it.

We also have a couple of concerns for employees that I think go beyond this basic premise.

One is that we are very interested in their careers. We have an investment in them and it is clear that if we force them to choose between their jobs and their children, someone is going to lose. Either the company is going to lose, they are going to lose, their children, society in general. I don't know how many losers there are.

But we have found that the child care leave solves those problems so that those choices don't have to be made.

And finally, we have always wanted to be known as a progressive employer with progressive benefit plans that are competitive in the marketplace. We think it will help to attract and retain good people.

I have to tell you that when my daughter was born several years ago and I was able to utilize these benefits, it certainly served to build a strong loyalty within me for my company.

There are just two thoughts that I would like you to consider when finalizing this bill.

The first has to do with administration. Being a benefit administrator, if you can make it as simple to administer as possible, please do.

Second, I would ask you, when you are setting up the commission, which I applaud as well, that you allow ample room on the commission for members of different sizes and types of businesses to give their perspectives on the issues.

It is unfortunate that only one man is a witness today. I feel I must comment that this is not a woman's issue. Rather, it is a parental issue, and I am sorry that more of the witnesses are not men.

I would like to close by saying I am extremely pleased to see how many of Connecticut's congressional delegation are supporting this bill. I think it is indicative of the concern many in our State have for working parents and their children.

Thank you for letting me appear, and I certainly hope this bill passes.

Thank you.

Mr. HAYES. Thank you, Ms. Kardos.

[The prepared statement of Jeanne F. Kardos follows:]

PREPARED STATEMENT OF JEANNE F. KARDOS

My name is Jeanne Kardos and I am Director of Employee Benefits for Southern New England Telephone, a telecommunications company which operates primarily in Connecticut and which employs approximately 14,000 employees.

I welcome the opportunity to speak to you today not only as a representative of my company and its benefits policies but as a working mother with two children. Professionally and personally, the company and I are very much in favor of providing parental leave and disability programs.

Southern New England Telephone has had a maternity disability program and a child care leave policy since 1977. In 1979, we added anticipated disability coverage so that an employee can take time off in anticipation of a medical disability—in this case, having a child. Since then, maternity disability has been made more flexible and in 1983, we also included leave for adoptive parents.

Here's how our plan works:

ANTICIPATED DISABILITY LEAVE

At any time during pregnancy, an employee can take unpaid leave for what we call Anticipated Disability. If her physician certifies that she is disabled during this period, she would then be covered under our regular disability plan which pays either full or half pay depending upon her length of service with the company.

DISABILITY PLAN

At the time of delivery, and until her doctor clears her to be free from disability and able to work, she is covered by the disability plan which again includes full or half pay benefits. This is, of course, subject to review by our Medical Department.

CHILD CARE LEAVE

After the period of disability, she may then take an unpaid child care leave which can extend up to 12 months after the birth of her child. During the first 6 months, she has return to work rights which guarantee her a job which if not exactly the one she left, is similar and has the same level of compensation. The total amount of leave time including the anticipated leave and the child care leave may not exceed one year.

Fathers may also take up to 12 months unpaid parental leave and the same 6 months guaranteed reemployment rights also apply to them.

The same provisions apply during adoptive leaves.

OTHER BENEFITS

During all periods of disability the employee is fully covered under SNET's benefit plans.

Benefits continued during anticipated disability and child care leave are company-paid life insurance and death benefits under the company's pension plan. Employees may also elect to continue participation in the company's group medical and dental plans at their own expense.

The employee receives service credit with the company during the entire disability period and up to 30 days credit during the leave.

There is no loss of seniority upon return to work. Service is automatically bridged and all benefit plans and vacation allowances pick up where they left off when the employee began the leave.

PERSONAL LEAVE

The Company also has a Personal Leave policy which can be used when there is illness in the employee's family. This again may extend for up to 12 months but carries no guarantee of reemployment.

Flexible return to work arrangements are common at SNET. Depending on the type of work the employee does, it may be possible to work part time or to have flexible hours. Supervisors are encouraged to work with employees returning from leave in order to make the transition as smooth as possible.

To give you an idea of the levels of participation in our program, during 1985, 60 employees took anticipated disability leaves and 175 chose to work up until they delivered. The average disability period was 7 weeks after which 199 employees took child care leaves. Six employees took advantage of adoption leaves. Most leaves ranged between 3 and 6 months after delivery and the vast majority *do* return to work. While only one father took a child care leave after the birth of his child last year, there is a growing interest and we expect more to participate in the future.

In 1984, we went one step further and in response to requests by employees, helped them established a day care center in New Haven, Connecticut, where approximately one-half of our employees work. We did this primarily so that quality, affordable infant care from the age of three months to two years of age could be provided. As you know, across the country, good infant care is in critically short supply. After 15 months of operation, we're proud that the child care center is organized and managed by an employee Board of Directors, is financially independent of the company and running at full capacity.

There are several factors which have caused us to develop our benefit philosophy with regard to maternity and parental care. Along with many leading companies in the country, we recognize that women with children are in the workforce to stay. Whether they are single parents or not, they have special needs involving pregnancy and child rearing. We've also responded to a heretofore ignored group—fathers who want to be involved with full-time child rearing at some point after birth or adoption. The special needs of these parents and more than that, the benefits which accrue to them and their children from this early participation in child rearing, cannot be ignored any more than the widely accepted need for medical or pension benefits.

In addition, one of the most important concerns we share with our employees is an interest in their careers. It is clear that forcing them to choose between their children and their jobs, or to compromise on either, produces at least one loser—maybe two. Adequate disability and parental leave can solve these problems. The employee returns to the company when he or she is prepared to do so, and the company retains an important asset.

Lastly, we want our benefit plans to be recognized as progressive and competitive. We know that it will help in attracting talented individuals and if they are happy with their benefits, they'll want to stay with us.

I personally have a tremendous sense of loyalty to Southern New England Telephone which stems in part from the benefits I received at the time my daughter was born seven years ago and the flexibility I have enjoyed in her child rearing.

I would like to make two requests for your consideration in finalizing this bill:

First, speaking as a Benefits Administrator, a benefit program under this law should be easily administered without the requirement for a great deal of paperwork and monitoring. The ability to frequently come and go from leaves as provided in Section 103 could make such a program unmanageable.

Second, it is important that representatives of different sized businesses be appointed to the Commission to lend their diverse expertise and perspective.

I would like to close by saying that I was especially pleased to see that Connecticut's delegation is strongly represented among the sponsors of this bill. I think it is indicative of the concern for the needs of working parents and their children in our State.

Thank you for allowing me to appear before you today. We are very supportive of this bill and hope that it succeeds.

Mr. HAYES. Ms. Inkellis.

Ms. INKELLIS. Mr. Chairman, members of the subcommittee, thank you very much for giving me the opportunity to testify before you today on the Parental and Medical Leave Act of 1986.

My name is Barbara Inkellis, and I am the general counsel of Disclosure Information Group. Disclosure is a small information company headquartered in Bethesda, MD. I think I am the small business representative here today. We employ approximately 325 people. Most are located in Bethesda, although we have about 50 in New York and 10 in the Los Angeles area.

My testimony on this legislation today is written from the perspective of a member of management of a small company.

On the other hand, I can't ignore the fact that I am the full-time working mother of a 14-month-old girl, and as I think most of you have noticed, I am about to have my second child. I obviously would benefit from the provisions of this bill—although I think my children are a little bit too close together for me to receive all the bill's benefits—and I have already benefited from a similar, although not identical, leave policy adopted by my employer.

Disclosure's policy, as presently written, grants employees disability leaves of absence for up to 6 months. The leave is unpaid, although employees may choose to use their accrued but unused sick and/or vacation leave until that leave is exhausted.

Employees are expected to return to work as soon as they are physically able to do so.

The difference here is that the company cannot and does not guarantee a position to an employee when he or she is able to return from disability leave.

Rather, the way the company policy is written, it dictates that we make every reasonable effort to place an employee returning to work in the same or a comparable position at the same or comparable rate of pay.

What we are trying to do is be sensitive to the needs of disabled employees while taking into consideration the realities of a small business. We don't have extra people to do jobs.

Let me cite you some statistics to illustrate the number of individuals that our policy affects. Because we are dealing with such small numbers here, I am not sure they are statistically significant, but that is all I have to offer you.

In 1984, 13 employees took disability leave—5 took medical leave and 8 took maternity leave.

Of the 13, 9 either did not want to return to work or could not return to work.

Of the remaining four, three returned to work and we were unable to find a position for the fourth.

In case you are interested, the fourth person was a man who had been disabled—I have forgotten what kind of disability he had. After he went on leave his job was eliminated. We just realized we didn't need that position, and there were no other positions available when he was ready to return to work. That was the reason we couldn't take him back.

In 1985, 13 employees took disability leave; 4 were for medical reasons and 9 were for reasons of maternity.

Of these 13, 5 didn't want to come back to work. Of the remaining eight, seven returned to work and we were unable to find a job for the eighth.

I don't know the reason why we couldn't find a job for the eighth, but I do know, again, that it was a man.

Thus far this year, two employees have been on disability leave. One has returned and the other will be coming back this summer.

Roughly speaking, therefore, approximately 4 percent of our work force has taken disability leave in the past 2 years. Over half of those on leave, or 14 people, wanted to return. Of those, we were unable to accommodate only two.

The average amount of leave taken by our employees on medical and maternity leave is less than 3 months.

How does our company handle this? Well, like many small companies, we don't have several people performing the same function, and most people handle a variety of functions.

Therefore, it is not easy to get a person's job done when he or she is gone.

We have used three different methods to accomplish this. Sometimes we hire temporaries, which, as you can imagine, is expensive. Generally, it costs more to hire temporaries than the absent employee's salary and benefits.

Sometimes we cover the responsibilities of the absent employee with overtime by other employees. This can be even more costly than hiring temporary help but often times it is our own workers who are the most easily trained because they are familiar with the business and what we do.

Most frequently we divide the high priority job responsibilities of the absent employee among several others in the company, and let the nonpriority job responsibilities of the absent employee and the employees covering the absent employee's job just fall by the wayside. And then, if we are in a pinch, we use overtime just to get everything done.

All of these solutions, as you can imagine, require the absent employee's supervisor to train the individual or the individuals who will be performing the absent employee's work. As a result, no matter what the alternative that we select, it is costly to hold a job open, both in terms of time and money.

Personally speaking, as a mother who is a member of the work force, I support the social philosophy that H.R. 4300 embraces.

As an employee of Disclosure, I am most appreciative of the fact that I was able to take time off and be with my daughter when she was born and that I will be able to be with my next child whenever he or she is born.

I am proud to be associated with a company that takes into consideration the needs of its work force when it is deciding its policies.

As a member of management, though, that is the capacity in which I testify here today, I can perceive the difficulties that legislation of this nature may create.

Even with the best of intentions, and I assure you they were the best, Disclosure has only been able to reemploy 12 of the 14 employees that wanted to return to work after disability leave in the past 2 years.

The direct and indirect costs of requiring us to find a place for everybody would have been high.

That is all I have to say right now. I anticipate there may be some questions, and I will get to the rest later.

Thank you very much.

Mr. HAYES. Thank you.

[The prepared statement of Barbara G. Inkellis follows:]

PREPARED STATEMENT OF BARBARA G. INKELLIS

Mister Chairman, Members of the Committee

Thank you very much for giving me the opportunity to testify before you on the Parental and Medical Leave Act of 1986. My name is Barbara Inkellis, and I am the General Counsel of Disclosure Information Group. Disclosure is a small information company headquartered in Bethesda, Maryland. We employ about 325 people—most in Bethesda, although we have approximately 50 in New York City and 10 in the Los Angeles area.

My testimony on this legislation will reflect the fact that I am a member of the management team of a small company. On the other hand, I cannot ignore the fact that I am the working mother of a 14 month old girl about to have her second child who would obviously benefit from the provisions of this bill, and who has already benefitted from a similar leave policy adopted by her employer.

Disclosure's policy, as presently written, grants employees disability (which includes maternity) leaves of absence for up to six months. The leave is unpaid, although employees may choose to use their accrued sick and/or vacation leave until that leave is exhausted. Employees are expected to return to work as soon as they are physically able to do so. The company can not and does not, however, guarantee an employee a position when he or she is able to return from disability leave. Rather, company policy dictates that we make every reasonable effort to place an employee returning to work in the same or a comparable position at the same or a comparable rate of pay. We believe that this policy is sensitive to the needs of disabled employees but reflects the realities of a small business that does not have extra hands to get its job done.

Let me cite you some statistics to illustrate the number of individuals that our policy affects. In 1984, 13 employees took disability leave: five took medical leave and eight took maternity leave. Of these 13, nine either did not want to return to work or could not return to work. Of the remaining four, three returned to work and we were unable to find a position for the fourth. In 1985, 13 employees took disability leave: four for medical reasons and nine for reasons of maternity. Of these 13, five did not wish to return to work. Of the remaining eight, seven returned to work and we were unable to find a position for the eighth. Thus far this year, two employees have been on disability leave. One has returned and the other will be back this summer. Roughly speaking, therefore, approximately 4% of our work force has taken disability leave in the past two years. Over half of those on leave, or fourteen people, wanted to return; of those, we were unable to accommodate only two.

The average amount of leave taken by our employees on medical and maternity leave is less than three months. How does our company handle these extended absences? Like many small companies, we typically do not have several people performing the same function, and most people handle a variety of tasks. When an employee is on disability leave, therefore, it is not a simple matter to get that person's job done. Sometimes we employ temporaries from agencies, which, as you can imagine, costs more than the absent employee's salary and benefits. Sometimes we cover the responsibilities of the absent employee with overtime by other employees. This may be even more costly than hiring temporary help, but our own employees are often the only readily available source of sufficiently skilled workers. Most frequently we divide the high priority job responsibilities of the absent employee among several individuals, and let the lesser priority job responsibilities of both the absent employee and the employees picking up the slack fall by the wayside, using overtime if needed. All of these solutions require the absent employee's supervisor to train the individual or individuals who will be performing the absent employee's job. As a result, no matter the alternative selected, it is costly to hold a job open, both in terms of time and money.

Personally speaking, as a mother who is a member of the work force, I support the social philosophy that H.R. 4300 embraces. As an employee of Disclosure, I am most appreciative that company policy allowed me time with my daughter when she was born, and will allow me time with my next child when he or she is born. I am proud to be associated with a company that is sensitive to the needs of its work force. As a member of management of a small company, however, I can perceive the difficulties that legislation of this nature may create. Even with the best of intentions, Disclosure has only been able to reemploy 12 of the 14 employees that wanted to return to work after disability leave in the last two years. The direct and indirect costs of requiring us to find a place for every employee that wanted to return to work would have been excessive.

I hope that my testimony has been helpful to you. Thank you very much.

Mr. HAYES. Ms. Brosseau.

Ms. BROSSEAU. Thank you, Mr. Chairman and members of the committee. Good morning.

My name is Irma Finn Brosseau and I am the chief executive officer of the National Federation of Business and Professional Women's Clubs, Inc., and the Business and Professional Women's Foundation.

I am here today representing our membership organization of over 140,000 members, with clubs in every congressional district in the United States.

BPW/USA seeks equity, full participation and economic self sufficiency for working women.

As an organizational advocate for working women, we have a particular interest in a responsive workplace that is flexible in its policies. Only a flexible workplace will be able to meet the needs of the increasing number of women entering the work force each year.

We are not only an advocate of women's issues, we are also an employer. And as an employer, I am proud that our personnel policy reflects our philosophical approach to workplace issues, an approach that promotes a variety of workplace options.

For example, we offer our employees flex time, job sharing and the opportunity for part time employment.

In addition, our pension plan offers full vesting after 3 years of employment, and we offer a liberal parental leave policy.

A recent study at Yale, which was mentioned before, noted that the family is a primary contributor to the well-being of children. The study noted, though, that not only are the mothers' salaries vital to the family, but that many American families do not have the means to finance leaves of absence from work.

In another study at Stanford, it was noted that as long as parents are responsible for children and this responsibility is borne disproportionately by women, sex differences in the labor market are likely to persist.

With that in mind, we believe that parents should have the opportunity to spend time with their newborns and that women should not be penalized in the workplace for bearing children.

In supporting H.R. 4300, I would like to describe the parental leave policy in place at BPW/USA and the BPW Foundation.

We offer 6 weeks of paid parental leave to our employees, both male and female.

For example, our computer specialist, Eric McAvoy, has recently returned from 6 weeks of parental leave. His wife's employer had a much less generous plan than ours, so he spent several more weeks at home with their baby than his wife was able to do.

In addition to the 6 weeks of paid leave, our employees may take up to 4 months of leave and be guaranteed his or her job on return.

Our personnel manual states, maternity, paternity or adoption leave shall be granted for up to 4 months to permanent employees who have been in the continuous employ of BPW for at least 1 year and who intend to return following such leave.

An employee on parental leave shall be compensated for 6 weeks at his or her effective rate of pay at the time the parental leave is taken.

Annual and sick leave accrual and benefits—health, disability, life and pension—shall be continued during parental leave.

An employee has the right to return to his or her former position when returning from parental leave of 4 months or less.

Any leave beyond 4 months may be requested as a personal leave of absence, and the policies governing such leave of absence will pertain.

Our parental leave covers both biological children and adopted children. We believe that the process of getting to know, and getting used to a child, is no different for biological than for adopted children.

At present, we have two staff members on parental leave, and they will be soon followed by two more. All are planning various amounts of time at home, and have made arrangements with their supervisors for a designated return date.

Let me point out one more area in which I think the committee will have an interest. Our sick leave policy for employees provides that sick leave may be taken to care for a sick child.

Our commitment to providing the best working environment for parents, both male and female, includes provisions for dealing with the neverending colds, flus and other recurring ailments of young children.

As an employer, I understand the cost concerns of parental leave policies. However, there is no free lunch and we will all pay, perhaps in some other way, if we do not pay attention to the needs of American families.

A sound parental leave policy is workable. At BPW, our employees have made an investment in us and we believe it is right to make an investment in them.

Thank you for this opportunity to present this statement before this committee.

Mr. **Hayes**. Thank you.

[The prepared statement of Irma Finn Brosseau follows:]

PREPARED STATEMENT OF IRMA FINN BROSSEAU

ABPW/USA, the National Federation of Business and Professional Women's Clubs, Inc., was founded in 1919 to improve the status of women in the workforce. Today, BPW represents over 140,000 members in every Congressional district in the United States. It is a pleasure to discuss parental leave with you and explain the employee leave policies of BPW.

The National Federation of Business and Professional Women's Clubs, Inc. has a definite mission; it is to promote economic self-sufficiency, equity, and full participation for working women. To that end, we have attempted to provide the most family oriented personnel policy that is possible for a small non-profit organization.

BPW was organized in 1919 to elevate the standards for all working women. We have a proud history and tradition of advancing the cause of working women, and that includes working mothers. Much of our advocacy efforts center on the working mother who is also a single parent. All of our work is channelled in the direction of working women.

BPW also performs research on working women's issues, and we make our findings accessible to the public. In 1981, we established the National Council on the Future of the Workplace and have councilors in each state to assure women workers equity in the workplace of tomorrow. We are concerned about the impact the workplace has on the family life of its employees, both male and female. The Chair of our National Council, Eleanor Holmes Norton, stated out sentiments perfectly when she said, "The workplace has had a major impact on our families; now the families must have an impact on family life." Because BPW believes in this concept we have initiated an outreach program to help employers adjust to the increasing number of working women, many of whom are mothers and single parents.

The policies that BPW espouses are the same ones that we bring to our employees. They are personnel policies that allow great flexibility in the amount of time working parents can spend with their children. For example:

Flexitime.– We have a variety of starting and ending times to allow employees to juggle personal and family lives with their work requirements.

Part-time work.—At present, there are several part-time staff who could not take on full-time work, because of family or other restrictions.

Job sharing.—We benefit from the skills of the people who share jobs, and it results in greater efficiency.

Parental leave.—Here we are somewhat unique, not only in offering six weeks of paid leave to the employee, but including men in this policy as well as women. At this time, our Computer specialist, Eric McAvoy, has just returned from six weeks of parental leave. In addition to the six weeks of paid leave, the employee may take up to four months leave and be guaranteed his or her job back on return.

Our personnel manual states: Parental leave, maternity, paternity, or adoption leave shall be granted for up to four (4) months to permanent employees who have been in continuous employ of BPW for at least one year and who intend to return following such leave. An employee on parental leave shall be compensated for six weeks at her or his effective rate of pay at the time the parental leave is taken. Annual and sick/accident leave accrual and benefits (health, disability, life and pension) shall be continued during parental leave. An employee has the right to return to her or his former position when returning from parental leave of four (4) months or less. Any leave beyond four months may be requested as a personal leave of absence, and the policies governing such leave of absence will pertain.

I want to stress that we give parental leave, not maternity leave and that we cover both biological children and adopted children. We strongly believe that the process of getting to know and often, getting used to, a child is no different for biological than for adopted children, and both deserve the time with their new parents. We also do not discriminate by sex; I mentioned before that our Computer Manager has just returned from his parental leave. His wife's employer had a much less generous plan than ours, so he spent several more weeks at home with their baby than his wife was able to.

At the present, we have two staff members on parental leave, and they will soon be followed by two more. All are planning various amounts of time at home, and have made arrangements with their supervisors for a designated return date.

Let me point out one more area in which I think the Committee will have an interest; out sick leave policy for employees provides that sick leave may be taken to care for a child, as well as for the actual employee. Our commitment to providing the best working environment for parents, includes provisions for dealing with the never ending colds, flu, and other recurring ailments of young children.

Unlike The National Federation of Business and Professional Women's Clubs, Inc., one of America's largest employers, the Federal Government, is inconsistent in the way their leave is handled. The actual approval of time off for a woman, and the length of this period, is up to a supervisor's discretion. Therefore, the actual leave time employees are allowed to take, varies from government agency to government agency. Absence due to the birth of a child is to be taken as sick leave, annual leave, or leave without pay.

The federal government treats pregnancy like any other medical disability. This means that sick leave may only be used to cover the period required for physical examinations and to cover the period of incapacitation. A woman may take sick leave that she has accrued. There are cases where some government agencies have advanced sick leave, but many do not follow this rule. If a new mother wants additional time to stay home with her newborn, she can ask for any of her earned annual leave, or leave without pay. A government agency has no obligation to give her either of these.

Fathers and parents who adopt children are not authorized to use sick leave. They are also subject to the discretion of their supervisors; in order to take this time off, their managers must agree that they may use their earned annual leave, or leave without pay.

At Yale University, the Yale Bush Center in Child Development and Social Policy convened an advisory committee to study the changing make-up of the working force upon families with infants. The Committee looked at research from every aspect of the well-being of infants and their families. They considered the demographic features of the family and the workforce, infant care preferences of parents, and the quality of present day care. They also looked at a variety of private leave care policies. Their findings revealed that the family is the primary factor for the development and well-being of children, that mothers' salaries are vital to the family, and that many Amercian families do not have the means to finance leaves of absence from work. They also found that more than two-thirds of nations in the world have some provisions for parents of infants to take paid, job protected leaves of absence, for physical recovery and to care for newborn infants.

The Parental and Medical Leave Act (H.R. 4300) addresses the concerns of the Yale Bush Center study. It would fill the gap left by other laws by providing, 1) six months job-protected medical leave for all employees who experience a short-term serious health condition, 2) four months job-protected parental leave for all employees upon the birth, adoption, or serious health condition of a son or daughter, and 3) a commission to recommend means to provide salary replacement for employees taking parental and medical leaves.

As I mentioned before, BPW has gone beyond the traditional concept of maternity leave; our parental leave policies afford not only mothers, but fathers, the opportunity to take leave. It is important for both parents to have an active role in caring for a baby, adopted son or daughter, or spend time with a child suffering from a major health condition.

The number of families with two working parents will continue to increase, so we have to find a way to eliminate the threat of losing one's job. The old stereotype of most mothers exiting the workforce to stay home with their children, has been disproven. In 1984, 70% of women age 25 to 54 were in the workforce, and statistics indicate that approximately 50% of mothers with children under one-year are employed.

Last Thursday, the Bureau of Economic Research at Stanford University released a report. The study said that in 1983, women were no better off economically than they were in 1959; mainly because they hold the prime responsibility for children. Women will never be able to achieve parity as long as society precludes men from sharing this obligation. The report goes on to state that, "As long as parents are responsible for children and this responsibility is borne disproportionately by women, sex differences in the labor market are likely to persist.

Even though an increasing number of companies are beginning to offer parental leave, most men in these companies tend to take only a few days off. They have to be practical; they generally earn more than their wives, and families cannot afford the financial loss that unpaid leave brings. When a male teacher in Massachusetts took off one year, he expressed the opinion that many men want to take more leave, but there is too much fear of put-down from their employers. They are often asked, "Can't your wife take care of those things?"

Parents are now being faced with the very difficult decision of whether to stay home with their child and risk losing their jobs, or relegate the job of childrearing to someone else. Americans should not be forced to make this decision. Parental leave is good for the family and good for the worker's job performance. The early stages of a child's life are of great importance. For too long women have been the sole beneficiaries of maternity leave and fathers have been excluded from this period of the baby's life. This is a critical time for a father and his child. America's workforce is constantly changing; mothers are no longer able to randomly take time off to care for a sick child. Affording all workers the opportunity to take parental and medical leave is one way this country can ever help to stab~~ilize family~~ life.

Mr. Chairman, I have addressed the parental leave policies of the National Federation of Business and Professional Women's Clubs, Inc., as an employer. I hope our experience will be helpful to your Committee as you consider this legislation. I would be pleased to answer any questions you may have.

Mr. **Hayes**. Ms. Hager.

Ms. **Hager**. My name is Susan Hager. I am president of Hager, Sharp and Abramson, a public relations firm here in Washington, which I founded 13 years ago.

I serve on the national board of the National Association of Women Business Owners and I am on the executive committee of the National Small Business Association.

I am here today representing the U.S. Chamber, and accompanying me is Virginia Lamp, who is an attorney for the chamber.

I want to thank you, Mr. Chairman, for the opportunity to speak on H.R. 4300, and in the interest of time I will certainly very much highlight my remarks.

There are a number of reasons why the chamber opposes this legislation, but let me make the following points.

We think that maternal leave is a very important benefit. It is one which the chamber encourages its members to utilize in order to accommodate the realities of the workforce in this day and age. It is one in which we think more and more people are beginning to take advantage of and to use.

However, we also believe it is very important to maintain the voluntary nature of employee benefits. And from a small business standpoint, I say that because it is the employer's flexibility that small businesses that I need, to tailor benefits to the individual workforce that we have.

It gives many employers the ability to bargain collectively over various benefits or to accommodate the individual circumstances of employees as they arise.

While it is very true that other countries—have placed a premium on government imposed parental leave, most U.S. employers have developed a comprehensive total employee benefit package, including health and life insurance, pensions, social security, educational assistance, and many others.

On the average, U.S. employers spend 37 cents of every payroll dollar on employee benefits. That is perhaps not the way it should be spent, but it is a significant amount.

Another point is that while other countries—the ones that were mentioned may have parental leave policies that are much better than they are in this country, other countries don't have the 18 million small businesses out there creating jobs, and that is where it is coming from in this economy, and not from the big business sector.

The cost of unpaid leave, even unpaid leave in this situation, is substantial and would be most difficult to bear for the small businesses.

The costs include wages for a replacement worker for 4 to 6 months, the cost to continue the health benefits, the biggest cost of productivity.

A preliminary study done by the National Chamber finds that the cost of continuing health and insurance benefits would be over $3 billion.

Some more specific concerns with this legislation, as far as I am concerned, are around the day-to-day problems that employees and employers encounter.

That is really why I address the small business exemption. If there is a reason to exempt 4 or 10, why not 25 or 100? I don't understand what the cutoff is.

We are also concerned, though, about operational disruptions.

The bill contains no notice requirement, no length of service requirement. It does not exempt any industry or business based on circumstances which may make this leave policy a serious hardship.

The bill raises questions to me about the rights of the replacement employee. Would that new employee also be immediately eligible for taking leave? Am I to fire that new employee when the replacement returns? Unfortunately, my business does not grow fast enough to maintain them both.

And lastly, I think that this bill discriminates against those families who are economically strapped and cannot afford to have a wage earner out of work for any period of time.

I think the bill has assumed that all U.S. businesses are the same size, that we all have the same type of workforce with the same skills, that we all have the same resources, and that there is no difference between us.

I would really like to stop right there, since my full statement will be included.

Mr. HAYES. Thank you, Ms. Hager.

[The prepared statement of Susan Hager follows:]

PREPARED STATEMENT OF SUSAN HAGER

My name is Susan Hager. I am President of Hager, Sharp and Abramson, Inc., a public relations firm in Washington, D.C., and a member of the U.S. Chamber's Council of Small Business. I also serve on the National Board of the National Association of Women Business Owners and the Executive Board of the National Small Businesss Association. Accompanying me today is Virginia Lamp, Labor Relations Attorney for the U.S. Chamber of Commerce. The Chamber appreciates this opportunity to express its concerns about H.R. 4300, the "Parental and Medical Leave Act of 1986."

I. STATEMENT OF INTEREST

The U.S. Chamber of Commerce, representing over 180,000 companies, believes parental leave is an excellent benefit and one which—with the growing number of women in the workplace and with more men assuming new family responsibilities—more employers should consider providing to their employees. Many Chamber members already are providing maternity or parental leave benefits to their employees. Many more may find they will need to do so in order to attract and retain the most talented employees, some of whom may be balancing professional and family responsibilities.

II. GENERAL CONCERNS WITH H.R. 4300

Although the Chamber can see the value of parental leave, it opposes H.R. 4300 or any other federal legislative mandate to provide an additional employee benefit for the following reasons.

Congress has required employers to pay for three types of employee benefits: Social Security, workers' compensation, and unemployment compensation. However, even important benefits, such as health insurance and pension coverage are provided voluntarily. Congress does not and should not require by law these and other benefits, such as vacations, medical insurance coverage, educational assistance, pension benefits or a host of other benefits that comprise our nation's comprehensive voluntary employee benefits system.

Retaining the voluntary nature of most employee benefits gives employers the flexibility they need to tailor benefits to their individual work forces, to bargain collectively over various benefits, or to accommodate the individual circumstances of employees as they arise. In addition, employees assess a vast array of items, such as wage scales, benefits, and opportunity for advancement, when they consider the attractiveness of working for a particular employer. The Chamber believes that voluntary employee benefits provide employers the flexibility to compete in recruiting and retaining valued employees.

If employees highly value parental leave, labor unions, individual employees, or groups of employees are capable of negotiating this benefit with employers. In fact, 36 percent of collective bargaining agreements contain clauses granting maternity leave. Unfortunately, the Chamber is observing a troubling pattern of employee benefits and wages being legislated rather than negotiated. Labor and management alike, as well as Congress, should have faith in the collective bargaining process and the ability of workers to negotiate for benefits. Parental leave is an important benefit, but one that should be negotiated by individual employers and their employees.

It should be noted that under the Pregnancy Discrimination Act of 1978 employer short-term disability plans must treat disability due to pregnancy and childbirth in the same manner as any other disability. Employers must, therefore, offer short-term disability benefits for maternity leave if they provide a short-term disability plan to their employees. This is a fair and appropriate policy, which the Chamber supports.

A Bureau of National Affairs survey in 1983 found that 90 percent of the companies surveyed provided maternity leave and 40 percent provided paternity leave. To be sure, the companies surveyed were large and, as with virtually all employee benefits, the smaller the firm, the less likely it could afford an additional benefit. The ability of a company to provide leave to its employees necessarily differs according to the circumstances of that company. That is one of our major concerns with H.R. 4300. Even with the exemption for companies with fewer than five employees, small businesses would be especially and disproportionately disadvantaged by this legislation.

Parental leave obviously has a great deal of superficial appeal. Who can be opposed to mothers and fathers spending time with their children? The question is whether that goal translates into and comports with sound employment policy. If the proponents of this legislation point to examples of companies in which a mother had to curtail her maternity leave for fear of losing a job, opponents can point to examples of employers responsibly and sensitively working with employees to establish a workable and flexible policy. However, the key is not to trade anecdotes but to support an environment in which sensible and affordable employment practices can prosper.

III. MAKING COMPARISONS TO OTHER COUNTRIES

Proponents of this legislation argue that the United States is the only industrialized nation in the world without a mandatory parental leave policy. The Chamber believes that is only half of the equation.

Other countries may have placed a premium on parental leave, but U.S. employers have developed quite a comprehensive total employee benefits package for their employees, including health and life insurance, pensions, Social Security, educational assistance, and many others. On the average, U.S. employers spend 37 cents of every payroll dollar on employee benefits. This country is a leader in terms of standards of living as measured by wages and the total employee benefits provided. The United States has chosen not to nationalize benefits, but instead to allow the private sector to be flexible and responsive to employee needs as they see fit. Even if other countries are "ahead" of us with respect to parental leave, there are good reasons not to emulate the employment practices in these and other nations.

Other industrialized nations have been mired in nearly a decade of economic stagnation. While the United States economy has been producing jobs at an unprecedented rate and has accommodated a virtual onslaught of women into the labor market, job creation in most industrialized countries has come to a virtual standstill. It must be added that it has been small businesses in America that have been creating jobs at record rates.

Between 1960 and the present, such countries as Belgium, the United Kingdom, Italy, and Germany all lost jobs in the private sector. The job growth that did occur occurred in government employment.

The critical point that Congress must recognize is that at some time new mandatory social responsibilities placed on employers by the government, will begin—if they have not already—to create a strong disincentive to work, to invest, and to engage in entrepreneurial activity. That, in turn, will contribute to a slowing of economic growth and job creation.

We are urged by the supporters of H.R. 4300 to pattern our practices after those of other industrialized nations. However, as the following table demonstrates, as measured by Gross Domestic Product, the standard of living in other nations, in which there is a high degree of government intrusion on private enterprise, is not one we should mirror. Are their economic woes due to their parental leave policies? No, of course not. But their economic performance is, in part, the result of actions that stifle free enterprise.

PER CAPITA GROSS DOMESTIC PRODUCT BASED ON PURCHASING POWER PARITIES

[United States = 100]

Country	1975	1980	1984
United States	100	100	100
Canada	101.8	100.3	95.6
Japan	65.5	71.2	75.6

PER CAPITA GROSS DOMESTIC PRODUCT BASED ON PURCHASING POWER PARITIES—Continued

[United States = 100]

Country	1975	1980	1984
France	77.5	78.9	75.8
Germany	77.3	81.8	78.5
Italy	60.5	63.7	59.7
United Kingdom	70.2	67.4	65.9

Source.—U.S. Bureau of Labor Statistics.

The U.S. Chamber believes that the Reagan Administration, a majority of Congress, and the American people recognize that our economic success and our phenomenal rate of job creation can be attributed directly to our emphasis on a limited role for government, tax rate reductions, and market solutions. That is not to say that the business community is insensitive or unresponsive to the noneconomic or human resource issues in the workplace. Employers know or they learn quickly that providing a package of benefits to accommodate the personal needs of their employees results in a more productive and committed work force.

It should be noted that mandating a new benefit does not increase the size of the "employee benefits pie." Instead, the cost and administrative burden of accommodating a new benefit simply may force employers to provide parental leave at the expense of some other employee benefit, such as health or life insurance, that serves a broader group of workers.

The Chamber encourages its members to consider flexible benefit plans whereby employers spend a fixed amount per employee on benefits and the individual employee chooses the combination of benefits most appropriate. Under such an approach, a young couple, for example, could take their benefits in the form of parental leave or child care allowances, while an older worker might select greater health care benefits and a single worker might select more vacation time. Employee choice is the key to flexible benefit plans, of which more and more employers are taking advantage.

We have no doubt that fostering parent-child bonding relationships is a positive goal, but the Chamber questions whether we, as a nation, want Congress or any other body—no matter how knowledgeable or respected—to tell us that four months is an appropriate time to spend with a newborn, adopted, or foster child. If four months becomes the federal guarantee, will the mother or father who chooses to return to work after just one month of leave be viewed as derelict in his or her parental duty?

More importantly, Congress's providing parents with parental leave does not mean that all parents will use it in the way that Congress intended it to be used. Will there be those who will acquire time off and then leave their children to the care of others, and should we monitor that?

IV. SPECIFIC CONCERNS WITH H.R. 4300

This legislation would require all employers (of five employees or more) to:

Provide both male and female employees up to four months of unpaid leave during any 24-month period upon the birth, adoption, or serious illness of a child;

Provide up to six months of unpaid leave annually to an employee unable to work because of a serious health condition;

Continue health benefits to employees who take either of the above benefits;

Guarantee the returning employee the same position or an equivalent one; and

This legislation also would establish a Commission to recommend a means by which paid leave would be mandated for these leave benefits in the future.

A. Coverage

Passage of H.R. 4300 would require virtually all employers to provide an extremely costly benefit, irrespective of the size of the business or extenuating business or operational circumstances that the business may be facing.

The costs associated with continuing health benefits, lost productivity, and of training and replacing an employee or number of employees for four to six months will be particularly difficult for smaller companies.

The loose definition of "employer" appears to cover consultants, part-time employees, and contract employees who, for purposes of other statutory requirements or contracts, may not be considered "employees" of that employer. Factors not taken into account with this broad-brush approach include such things as the number of employees who may be absent at one time, the availability of skills affected, or seasonal considerations.

The legislation appears to permit an employee to decide on a reduced schedule as opposed to total leave, with this option conditional on it not unduly disrupting the operations of the employer. Yet this standard is defined inadequately.

B. Commission to recommend paid leave

Significantly, Title III of the bill would establish a Commission to examine means and recommend legislation to provide workers with full or partial salary replacement during temporary medical leave, parental leave, and dependent care leave. Although unpaid leave represents a serious and substantial threat to businesses' ability to grow, compete, and create jobs—particularly small businesses—paid leave would have devastating national economic consequences. However, proponents of this legislation have made their goals clear—they want to mandate paid leave.

The Chamber currently is working on an estimate of the costs involved with mandating the leave policies in this legislation, as well as with mandating paid leave policies. Of course, the ultimate costs of paid leave would be the cost of the leave-taker's wages and continued benefits, the salary and benefits for replacement workers, and the lost productivity caused by having a substitute worker. By contrast, unpaid leave, while not as expensive for employers, still would involve substantial cost. More importantly, it arguably would discriminate against lower-income families who least likely could afford to have a wage-earner out of work for an extended period.

C. Reemployment guarantee

Any employee taking parental or medical leave would be entitled to return to the position he or she held when the leave commenced or to a position with equivalent status, benefits, pay, and other terms and conditions of employment. The employee would be protected from losing any benefits that had accrued before the leave was taken.

There seems to be a presumption—wrongly based in our opinion—that if there is a change in position, pay, or benefits within one year after such a leave, the change is retaliatory. In fact, those kinds of changes could be commonplace without any regard to retaliation. When Congress mandates extensive periods of absence, it is understandable—particularly for small businesses—that an employer necessarily will have to make adjustments. We believe that the reemployment guarantee is looked upon backwards by the supporters of H.R. 4300. Who more than businesses, which invest heavily in the training of workers, have an incentive to insure that workers are able to balance the demands of family and the workplace? The fact is however, that the guarantee cannot be satisfied in all circumstances as the legislation would require.

D. Administrative concerns

The administrative problems the Chamber has with this legislation center on the following:

(1) H.R. 4300 creates a new bureaucracy within the Department of Labor to investigate and enforce the rights granted in the legislation.

(2) H.R. 4300 would provide for yet another legal forum for processing charges brought against employers.

(3) H.R. 4300 would require the Department of Labor, in an unprecedented fashion, to review all agreements reached by private parties settling disputes under the act.

Specific concerns of the business community with the administrative mechanisms of the legislation include:

An ambiguous and loosely worded definition of the term "serious health condition," which serves as the trigger for parental or disability leave. Although the bill would allow an employer to require a claim for leave to be accompanied with a "certification," there is nothing indicating the need for medical conclusions as to the "seriousness" of the condition or the inability of the employee to perform job functions.

No specific period of advance notice is specified with respect to the leave policies. Employers would find it difficult, if not impossible, to plan short- or long-term projects where labor-intensive efforts were critical.

The legislation could have an unintended negative impact upon the hiring of women. For example, an employer considering hiring two equally qualified people—one a man, the other a woman—might select the man on the assumption that the woman more likely would exercise the full four months of leave.

The legislation appears to provide an automatic entitlement to a job for a person who takes leave. One practical problem facing employers subject to such a requirement would be the dilemma of what to do if workers are being laid-off while one or more employees are taking leave? Would the employer be forced to provide a job to an employee who would not have had that benefit, but for having taken the leave? An employer should not be required to create a job if one does not exist anymore.

The legislation appears to provide duplicate or overlapping rights and remedies with those provided by § 503 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 793.

The legislation would set up a potentially inherent conflict between an employer and employee on a routine basis. The loosely worded language in the bill easily could present practical problems. When an employer insists on proof of a "serious health condition," what would keep an employee from accusing that employer of "interference" with the employee's right to take the leave?

The relief provided is not limited to "make whole" relief. That, in combination with the possible award of attorneys' fees, provides a strong incentive for litigation at a time when this country is struggling with a lawsuit crisis of astronomical proportions.

There is no length of service requirement (i.e., one year), which typically is a requirement in the private sector.

The legislation could affect an employer's unemployment insurance costs. When the worker returns from leave and the replacement worker is laid-off, would the employer's unemployment insurance costs, determined by experience rating, increase?

And what about the replacement employee? What rights and benefits accrue to that new employee? Under the loose and broad coverage of H.R. 4300, the replacement employee also would seem to be eligible automatically for the leave policies contained in H.R. 4300—giving an employer no assurance that he or she had, in fact, found a reliable worker to meet his or her needs.

V. CONCLUSION

Enactment of H.R. 4300, legislation to mandate parental and disability leave policies for all employers, would set a dangerous precedent for U.S. businesses. Although Congress has yet to demonstrate that employers are not accommodating employees with family responsibilities or that a problem exists requiring a national remedy, this far-ranging legislation is getting serious national attention. The Chamber is concerned that Congress seems to (1) ignore the fact that all U.S. businesses do not have the resources or operating structure to provide the benefits that we all might agree are worthwhile to have and (2) to ignore the fact that those countries which provide generous parental leave policies and other social benefits through government fiat do so at the expense of their own greater economic growth, job creation, and development.

While the goal of H.R. 4300 may be laudable, its practical effect poses numerous concerns, which we have described. Marketplace forces will require more and more employers to offer parental leave to attract and keep the best employees. That is altogether appropriate. A greater emphasis on alternative work and benefit arrangements will inure to all employees because choice and flexibility will be the key.

We appreciate the opportunity to comment on this legislation.

Mr. Hayes. Ms. Hager, I guess since you finished last, I should start with you first. You seem to—you represent the chamber of commerce and you have raised certain issues that give rise to a couple of questions.

You mentioned the total cost. Could you repeat that? You said 37 cents. Is that per hour?

Ms. Hager. Out of $1, 37 cents of the payroll dollar.

Mr. Hayes. What does that include?

Ms. Hager. On both of the questions of the $3 million or the 37 cents, let me turn to the technical person here.

Ms. Lamp. Mr. Chairman, the 37 cents figure comes from our annual survey of employee benefits, and what that entails is the number of old age survivors disability and health insurance, unemployment compensation, worker compensation, all of those legally required, and that is the average benefit that is provided by an employer beyond the legal requirement.

Mr. **Hayes**. Do you have any figures that would indicate what the estimated cost would be of the parental leave policy?

Ms. **Lamp**. We are working on a more extensive analysis, but Susan Hager mentioned in her testimony that a preliminary study just on the cost of continuing the health benefits, the National Chamber Foundation has found that that would be over $3 billion. We can submit for the record how the foundation came to that figure.

Mr. **Hayes**. Ms. Hager, you mentioned the fact that you are a small employer. How many employees do you have?

Ms. **Hager**. I have 22 employees, 21 women and one man.

Mr. **Hayes**. Do you have any idea how widespread the parental leave policies are today among small employers?

Ms. **Hager**. No, I don't.

Mr. **Hayes**. Now to any member of the panel, it is my impression that the problem with many small and medium size employers is not that they have considered parental and medical leave policies and rejected them as unfeasible, but that most of these companies have even yet to address the issue or have informal policies. Do you agree? Is that generally the case?

Ms. **Inkellis**. I think that is the case. I think Dr. Frank said before, small companies don't develop policies until they need them. Small companies don't have enough people to sit around and come up with a disability policy and conceptualize all these issues. They just handle things as they arise.

I think we have had our disability leave policy for 2½ years. But with regard to other benefits or social policies, we handle the issues as they come up.

Mr. **Hayes**. I note the State of California does require disability leave. Do you know how many have small employers in the State of California?

Ms. **Inkellis**. No.

Mr. **Hayes**. OK. What percentage of companies do you think are operating under the informal or discretionary leave policies? Do you have any idea?

Ms. **Inkellis**. What percentage of small companies?

Mr. **Hayes**. Yes, small companies.

Ms. **Inkellis**. I have no idea. I would assume that most small companies have ad hoc policies, meaning that they make policy decisions when they face particular issues. I think often times these companies will take into consideration who the individual is, the amount of time the individual has spent at that job, the type of responsibilities that that person has, and whether that person's job can be performed by others or not.

Mr. **Hayes**. My background, for your information, this was an issue of great importance a number of years ago annually with collective bargaining. I am sure that Mr. Donahue, who appeared before I got here, must have indicated that.

But there is a great barrier to even insisting in contracts the extent of leave, and there are still many employers who are under contracts here and have no real set policy. That is not a part of the contract.

But some people have known it, that the time it takes to recruit and train new employees is often equal or longer than the amount of leave time that it would take by an already trained worker.

Do you feel this is an accurate statement?

Ms. **Brosseau**. It is difficult to find other professional people, but what you also will find very often is that these professionals make a choice after their 6 weeks, when they intend to use 4 more months, to phase in time and take on added work. This work can either be accomplished at home or some may come into the office for 3 days a week.

I don't think anyone is saying that this is the easiest thing in the world to implement, but it is very doable. As a matter of social policy, I think it is the fabric of the American family. And, as someone else has said, women in the workforce are here to stay, and so with each change in the social environment, different adjustments have to be made in the policies that we have. Now is the time to deal with the issue of parental leave.

There are social issues involved, and all employees have to share the responsibilities.

Ms. **Kardos**. I would like to respond to that, too. Even though I represent a very large company, often a large company is a collection of very small units, and my organization has about 30 people.

We recently had two maternity cases and I didn't replace them because they were very skilled people who were professionals with a great deal of technical expertise. I think the one with the least service had 8 years of experience.

In one case, the employee was an individual performer. After 2 months of leave I gave her a call and said, "How would you like it if I got a word processor for your home? She agreed to work part time at home for 6 months.

I actually extended the period of guaranteed re-employment for her until she could come back on the payroll full time.

In my experience, when this happens, you get more than part time out of them because they are so pleased with the arrangement, and we are so happy with it that it really works to everyone's benefit.

The other employee is in a supervisory position, which is a lot harder to not replace, but we just did some belt tightening, which is what I really think happens in most organizations.

Again, there was specialized expertise. I took someone else from another area, who was able to do part of her old job and watch over the supervision of the unit until the other employee came back. I would guess that that is the way it usually works.

Mr. **Hayes**. Ms. Roukema.

Mrs. **Roukema**. Thank you, Mr. Chairman.

Before I ask my questions, I neglected earlier to ask unanimous consent to have the letter from the U.S. Small Business Administration Council inserted in the record.

Mr. **Hayes**. Without objection.

[The document referred to follows:]

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

April 21, 1986

The Honorable Augustus F. Hawkins
Chairman
Committee on Education and Labor
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I have been following with interest H.R. 4300, the Parental and Medical Leave Act of 1986. I understand that the primary purpose of this bill is for employers with more than five employees to provide unpaid leave for parenting purposes or during illness. In addition, the bill would require that businesses, if they provide health care benefits to their employees, would have to continue coverage during unpaid absences. As the Chief Counsel for Advocacy of the Small Business Administration, I would like to share with you some concerns as to how this bill is likely to affect our nation's 14 million small firms.

The proposed legislation would discourage the hiring of young men and women and would be especially damaging to small business employers. In addition to the problems which would be created by the bill's mandatory unpaid leave for employees, H.R. 4300 merely adds to the difficulties small businesses already experience in providing health care benefits.

REQUIRED LONG TERM LEAVE POSES A PROBLEM FOR SMALL BUSINESS

The primary requirement of H.R. 4300 is to provide unpaid leave to employees for parenting purposes or during illness. Although employers are not required to pay workers for such absences, the disruption to work would have a detrimental effect on firms that hire few employees. A four and one half or six and one half month leave of absence is very likely to "unduly disrupt the operations" of a small business under any circumstances. Even if there were a convenient time to permit leave, how can unforeseeable pregnancies or illnesses be scheduled (or rescheduled) during this time? Furthermore, employees may continually disrupt their work schedule by taking leaves every two years for parental reasons, or annually for medical reasons.

Perhaps the effects of H.R. 4300 on small firms can best be illustrated by an example. A high technology business owner with six employees is required to grant a leave of absence to an employee whose child is seriously ill. (The "child" may be over eighteen years of age if he/she is incapable of self-care). The employer is left for over four months without a crucial employee - a hole that is especially gaping in such a small company. Can the employer afford to retain a vacated position for four months, or in the case of illness, for over one half of a year? Generally not - yet the small business employer usually operates on a low profit margin and cannot afford to establish a seventh position with accompanying salary and benefits. At the same time, if another employee is shifted to fill in for the worker on leave, it may only be on a temporary basis. When the employee on leave returns there must be a position available. The employer is then faced with an employee whose knowledge and expertise may not be up to date in the rapidly developing high technology industry, and the problem of demoting the employee who served in a higher level position for several months.

This example does not even address instances where more than one employee in a small business requires leave during the same period, or where part-time employees are involved, or when an employee requests leave on a recurring basis. (Many serious illnesses would require repeated absences). All of these situations would exacerbate the preceding problems for small employers.

H.R. 4300's EXEMPTION IS INADEQUATE

Even if the principle behind the legislation were considered good public policy, the exemption for employers of four or less employees in H.R. 4300 is ridiculously low. Small businesses can neither adapt to the loss of an employee for four and a half to six and a half months, nor are they able to afford the increased costs of providing health benefits to their employees on unpaid leaves. In general, the gap in health coverage affects firms with up to 100 employees (see attached chart for health coverage by employment size of firm).

PAID LEAVE IS NOT FEASIBLE

The fact that the proposed bill includes a provision to establish a commission to examine paid parental and medical leave suggests that additional employer mandates may be imposed in the future. I believe that the proposal does not warrant further exploration because it is infeasible. The profit margins of small firms would prohibit the provision of paid leave. Such benefits should be left to the discretion of private enterprises.

SMALL FIRMS CAN LEAST AFFORD TO EXPAND COVERAGE

H.R. 4300 would create a disincentive for small firms without health plans to initiate one, and may cause some companies to discontinue this benefit. While small businesses are struggling to establish health plans, the bill would extend coverage during leave periods, thereby increasing the employer's health care expenses. Higher premiums are likely to result if coverage were required to be extended for serious illnesses.

For small businesses, health insurance is the most common fringe benefit provided to employees. As the major employers of private-sector workers, small firms are particularly affected by any changes in health policy. Our research indicates that there is already a sizable gap between small and large companies' health care coverage and the costs of that coverage. As firm size decreases, employer-provided health insurance decreases. In 1983, 39 percent of workers in the smallest firms (less than 25 employees) were included in their employers' plans, while 85 percent of workers in firms with over 500 employees were covered by their employer. Even if another household member's health insurance is taken into account, approximately one in three workers in small firms has no health insurance compared to one out of ten in large firms. By making additional health insurance mandatory for employers H.R. 4300 would widen this gap.

Small companies currently pay higher health coverage costs for several reasons. Because of their lower profitability small firms are less able to afford costly premiums. Their size also prevents them from saving costs by self-insuring, as is the trend with larger firms which are able to spread risks among their employees. Also, self-insured businesses often are able to avoid the costs of state mandated benefit laws which small and medium-sized firms must include in their health care plans. Other reasons why small firms face higher health costs include their lack of flexibility in selecting, managing, and designing plans with cost-containment features, less ability to take advantage of alternative delivery systems which rely on patient volume in return for lower costs, and their disproportionate number of elderly workers who generally have higher health costs.

The Federal Government has increasingly turned to employers to take over greater responsibility in the provision of health care. Employers, rather than Medicare, are now required to serve as the primary payer of health care for older workers. Proposals which encourage or require employers to include retiree coverage and catastrophic care benefits in their health plans are being seriously considered, and the recently enacted Consolidated Omnibus Budget Reconciliation Act of 1985 mandates employers to continue health coverage for divorced spouses, widows, and certain dependents. Such changes not only significantly lead to increased premiums overall in the private sector, but also appear to disproportionately affect small firms.

H.R. 4300 WOULD DISCOURAGE SMALL BUSINESSES FROM HIRING YOUNGER OR PART-TIME WORKERS

Young people are more likely to take advantage of parental leave. Compared to large businesses, small companies hire more young workers and more workers on a part-time basis.[1] Frequently younger workers prefer higher wages to more comprehensive health benefits. If health benefits were mandated to be expanded, small business employers may be forced to cut back salaries for young employees, thereby reducing the firm's ability to compete with large firms for good employees. For those employers who do have health plans it would be more expensive to provide them under H.R. 4300. Moreover, employers may be discouraged from hiring young men and women.

At present, small firms which offer health care are likely to exclude part-time workers from their plan. A recent study by the National Federation of Independent Business shows that only 9 percent of surveyed respondents provided coverage to these employees.[2] This low figure reveals that is is generally prohibitively costly and administratively burdensome for most small businesses to cover part-time employees. (Only one percent of the nine percent was for health benefits that were less extensive than those for full-time employees. In other words, most small businesses cannot afford to offer a second type of plan geared toward part-time workers). H.R. 4300 would further discourage employers from providing coverage to this group, for it would mandate coverage for part-time workers during parental or medical leave.

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[1] U.S. Small Business Administration. The State of Small Business: A Report of the President. (Washington, D.C.: U.S. Government Printing Office), May 1985, p. 255.

[2] National Federation of Independent Business. Small Business Employee Benefits, December 1985. (Washington, D.C.: Research and Education Foundation), March 1986, p. 12.

THE PRIVATE SECTOR OR STATES ARE BEST ABLE TO MANDATE ANY CHANGES IN HEALTH PLANS

Any decision to provide employee benefits in the areas of paid or unpaid leave or health care should be left up to the employer. Employers and employees are best able to determine wages and benefits in the marketplace without government interference. Although the states' mandates to health plans have been creating problems for small and medium-sized firms which bear these costs, any proposal to continue coverage or provide unpaid leave to workers is preferably left up to them, not the Federal Government.

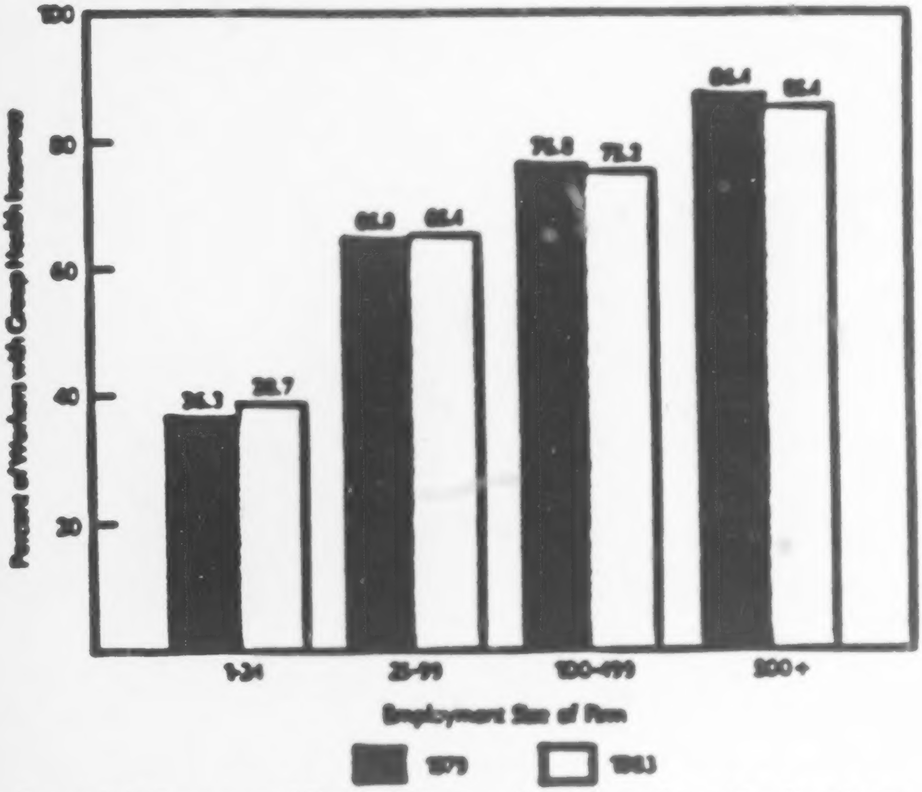
I hope that the Congress recognizes the burden H.R. 4300 imposes on employers, especially small businesses. If I can be of further assistance on this issue, please do not hesitate to call me. I appreciate your consideration of the Small Business Administration's views.

The Office of Management and Budget has advised that there is no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Yours very truly,

Frank S. Swain
Chief Counsel for Advocacy

Percent of Wage-and-Salary Workers in Employer's Health Plan by Employment Size of Firm, 1979 and 1983



Source: U.S. Department of Commerce, Bureau of the Census, *Current Population Survey,* May 1979 and May 1983, unpublished data.

Mrs. **Roukema**. The woman from the chamber is awfully brave to be here today.

Ms. **Hager**. This is extremely difficult for me.

Mrs. **Roukema**. I know it is. You are very brave. It is really talking as a mother, but I mean, in the very real sense.

But without necessarily agreeing with every point that you have made, I do have to credit you and certainly Ms. Inkellis with bringing a note of reality to the actual problems of implementation, because I think the points that both of you have raised are valid points, regardless of the propriety of the social policy that we are talking about here.

Ms. Kardos, following up on what you have just said I assume you have a union contract in your firm.

Ms. **Kardos**. Yes.

Mrs. **Roukema**. You do. So, you are in another category completely. Do you replace the people that have gone on leave with temporary help?

Ms. **Kardos**. I have done that on occasion for office clerical type jobs where the training period is very short. As I indicated a little while ago, I think where certain expertise is required, we just exercise some belt tightening.

Mrs. **Roukema**. But your own experience and the experiences outlined by the other two women here indicate the problem with the bill. And I am not saying it is not reconcilable, but there are real practical problems with the implementation of a mandated standard of this type. Because in some cases you can belt tighten, as I have done in my office, and in other cases you cannot.

In most cases, it is not wise either on the productivity level or on a financial level or on a practical level to hire temporary help for these short periods of time.

You described the supervisor whom you did not replace. What would happen if it were you? A person of your level of responsibility, now this is important, because this bill is mandating a standard for everybody, man and woman at every level. What would happen if it were you at your level of responsibility? We would have no replacement for you, would we? And wait a minute. And what do you do when I have to take you back—say I am your boss, I have already hired somebody else because we could not do without your position, and the bill says I have to take you back at the same salary or in a comparable position and I don't have a comparable position. Maybe in a company your size you can create one. But these other companies cannot. Do you see the problem with the bill?

Even if you are totally dedicated to the social policy that drives this bill, there are certain practical problems with it, and I would like to have some help from people in the field to help us iron out those problems in the real world, and not just simply make a statement for motherhood, because Heaven knows I am all for motherhood. I am one.

I am not being snide about this. I really want to look at the real life problems of the bill.

Ms. **Kardos**. Let me just respond that my replacement—and it is most likely not going to happen——

Mrs. Roukema. No, but it happened in my office. It has happened in my office. And if we are going to pass this bill, my office wouldn't be able to operate. Under Gramm-Rudman, I wouldn't have the money to let you come back, because I wouldn't have the money in the budget to hire two people at that level of income and responsibility.

I suspect that there are some small businesses out there that, if not equally strapped, at least face the same kind of problem.

Ms. Kardos. I don't know if it is an anomaly of my company but the one thing that happens there is that women who are in higher positions tend to return to work sooner. I think this results from their sense of irreplaceability in the organization as you go higher up.

And I do know that the women that I am aware of in policymaking positions who have had children have not been necessarily replaced, but that they have made themselves available in their homes for questions and they have worked with the company. I believe that is the key.

There is, after all, a substantial period of time for planning. I think the more critical jobs you have, the more closely you have to work with the employee, and together decide how you are going to handle the job during the leave period. And that is the way we have done it.

I would just like to insert some calculations I have made at this point. Ms. Hager was talking about the medical leave and I would just like to insert my figures. For the 200 women that had child care leave, if we had extended their medical benefits an additional 10 weeks beyond their disability period, it would have cost approximately $100,000 to the company in premiums, which is two-tenths of 1 percent of the $37 million I spend annually on medical benefits.

So, that would be the magnitude in my company.

Mrs. Roukema. Does anyone want to make a further comment? And then I am finished. Yes, go ahead. We will take you in order.

Ms. Inkellis. I wanted to comment also that the health—tell you that the portion of the bill that requires the continuation of health care benefits is, I think, the least costly aspect of the bill. I don't think that that is going to be a burden on small business. That is a pittance. It is really the productivity issue that is the much bigger issue.

Also, in terms of women in senior level positions, I support what Ms. Kardos just said. Perhaps women at this level have a better sense of loyalty to the company, although I am not sure that that is fair to say. My company is overwhelmingly blue collar and I can't really tell you that I spend a lot of time on the production floor talking to the other women there.

I came back to work after 7 weeks of leave. I am irreplaceable in the sense that I am the only company attorney. And so, for all of its needs, the company turned to outside counsel, which was very expensive. Because of the level of responsibility that I have in the company, management was free to call me at any time and did.

I was called constantly at home and it wasn't a problem. If a call came at a bad time, I just told them I couldn't talk.

We recently had an unplanned leave of absence. My company is run by two principals. There are five senior managers beneath the principals. One of those senior managers, who is 38 years old, suffered a stroke, totally unexpectedly, of course. And how did we survive? We just limped along.

This fellow returned to work after about a month. Yesterday I asked one of the principals what would we have done if the person who had the stroke had needed physical therapy, or all sorts of therapy, and his anticipated leave of absence was to be 6 or 9 months? The principal told me he would have kept his job open. I asked him why, and he replied, because this fellow has been with us for 14 years, he has evidenced enormous loyalty to the company, we have loyalty to him, and that would have been the fair thing to do.

That is how we developed our policy. It was the fair thing to do.

Mrs. **Roukema**. Thank you. A brief final comment?

Ms. **Brosseau**. It would never have occurred to me to hire somebody to replace a permanent staff member going on parental leave with anyone other than on a part-time or temporary full-time basis. I don't think there are many companies that would just turn around and add to staff.

But the up side is that more and more women are returning to the work force. Many are coming from a situation where they weren't working outside the home. As a result, we now have a homemaker who reentered the workplace, replacing one of our people on parental leave. And I think that as times change, different things evolve. Women working inside the home are a potential pool for a staff member's temporary replacement.

We have experienced it and it has worked.

Mrs. **Roukema**. Thank you.

Ms. **Hager**. I would just like to say that last year and the year that my old company lost a significant amount of money, if I had two people that I had—two people, two professional people pregnant in that year and I had to provide by this law, I think I would have gone under.

It is not true this year, but by God, it was true last year. I really, sincerely mean that. It makes the difference between staying alive and going under.

In my business, for a 4-month period of time, I cannot do work, and in the professional jobs the consultant—the freelancers that are talented enough that would work in PR firms and have the type of agency—are topflight creative people, are not out there sitting to work on a day-to-day basis.

I have to hire to get that work done and I would lose some clients. I really am in a position of what happens at the end of that period of time.

Mrs. **Roukema**. Thank you, Mr. Chairman.

Mr. **Hayes**. Ms. Hager, I have just got to follow in on this note. I see that you are very busy. My mind went back to the first employer that I dealt with in negotiations on this issue of paid maternity leave. His position was that he didn't think employers should pay for any maternity leave, and his reason for being in opposition was that he considered pregnancy as a gross negligence. He was that hard.

I want to thank you. You have given me some ideas.

Do you have any ideas——

Ms. **Brosseau**. I think if you have parental leave as an established policy available to all employees, we will meet the goal of having mothers and fathers nurturing their children. This type of policy that includes all employees would benefit not only women, but also men.

Mr. **Hayes**. Do you all agree?

Ms. **Kardos**. I can't speak for whether they would or not. We have only had one man take paternal leave, and I think the duration was—the ones who called and found there is leave have said, well, thanks, but no thanks.

Ms. **Brosseau**. Obviously, I am talking about paid leave.

Mr. **Hayes**. OK. Thank you very much. You have been a fine panel. We will give much consideration to your testimony.

This concludes our hearing.

[Whereupon, at 12:45 p.m., the joint committee was adjourned.]

[Additional material submitted for the record follows:]

American Federation of Labor and Congress of Industrial Organizations

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May 28, 1986

Honorable William L. Clay, Chairman
Subcommittee on Labor-Management Relations
House Committee on Education and Labor
2451 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to questions raised at the hearings on April 22, 1986 on H.R. 4300, the Parental and Medical Leave Act, on which we promised to provide additional information. These questions were: (1) what percentage of union membership is protected by features similar to those in the bill, (2) how do labor-management negotiated benefits compare with those required by the bill, and (3) what is the cost of providing health care coverage during leave periods in collective bargaining agreements?

Overall statistics are not available and our responses to the questions are estimates based on the informed judgment of individuals directly involved in negotiating and administering benefits of the kind mandated by H.R. 4300. We have checked with the AFL-CIO Industrial Union Department, which brings together different unions having contracts with the same company to give them stronger leverage at the bargaining table. More than 40 IUD unions participate involving over 2,000 bargaining units. In addition, a number of the AFL-CIO's largest affiliates were contacted as to what their collective bargaining agreements provide. We believe the results to be representative of the universe of collective bargaining agreements in the private sector.

1. We cannot provide precise figures on question number 1. Those whom we contacted estimate that more than 80-85 percent of their agreements offered some type of maternity leave, with about the same number of contracts guaranteeing such workers that they may return to the same job or a comparable one.

2. These leave provisions typically provide 6 weeks disability cash benefits and 5-6 months of unpaid leave. Though paternity benefits are increasing rapidly, they are still found in only a minority of plans and for a shorter period of time.

3. Figures and features of health plans vary greatly but the best estimate for the monthly cost of a typical plan is about $150 for family coverage and $70 for a single person. Though these figures provide a good basis for estimating the cost of health coverage for unionized workers during leave periods, the cost for the typical non-union employer should be much smaller because of less liberal health coverage or none at all.

Just a final note here to indicate a precedent-setting step which Congress has already taken with respect to the continuation of health insurance benefits for certain spouses, unemployed workers and their dependents in the 1986 budget reconciliation bill. The new law allows certain persons who currently have group health insurance through an employer group plan to continue that coverage temporarily at their own expense rather than losing it due to the death, divorce, or retirement of an employee spouse, or because of unemployment or reduced hours of work. This statute suggests a desire in the Congress to move in the direction of providing workers with basic protections for themselves and their families not unlike those being suggested by the Parental and Medical Leave legislation.

Sincerely,

Thomas R. Donahue

Thomas R. Donahue
Secretary-Treasurer

AFSCME®

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STATEMENT OF THE

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES

ON

H.R. 4300

THE "PARENTAL AND MEDICAL LEAVE ACT OF 1986

APRIL 23, 1986

The American Federation of State, County and Municipal Employees (AFSCME), a labor union representing over one million public employees nationwide, takes this opportunity to endorse H.R. 4300, the "Parental and Medical Leave Act of 1986". The legislation entitles employees up to 18 weeks of unpaid parental leave upon the birth, adoption or serious health condition of a child and provides up to 26 weeks of temporary medical leave in cases involving the inability to work because of a serious condition. The legislation also establishes a commission to study ways of providing salary replacement of employees who take such leave.

While H.R. 4300 benefits men and women alike, it is particularly advantageous to women who comprise a growing percentage of the work force. Today, women make up almost half of the labor force. Moreover, of those women who work, about 60 percent have children, 80 percent are of child-bearing age and 93 percent of these are likely to become pregnant at some point in their careers. In families where both parents are present, 89 percent are two-career families. Twenty percent of children currently live in single-parent households headed by women, but 50 percent of all children will spend some part of their childhood in a single-parent family. Despite this change in the American workplace, employers have been reluctant to adjust leave policies to address the changing demography of the workforce.

This legislation is necessary to fill gaps in previously passed anti-discrimination laws. The Pregnancy Disability Act (PDA) of 1978 requires that firms providing short-term disability or sickness benefits, replacing all or part of pay while individuals are out on leave, and also assuring them job protection at that time, must also cover women at the time of pregnancy and childbirth. However, the PDA did not require that employers provide job protection or disability insurance if none previously existed. The "Parental and Medical Leave Act of 1986" establishes reasonable periods of time during which employees could take leave for medical reasons, early child rearing and to care for seriously ill children, without the risk of termination or retaliation by the employer.

The major impetus behind H.R. 4300 is child development experts who base their advocacy on research findings about newborns and their families. Recently, two distinguished panels fully endorsed the concept of parental leave as an idea whose time has come. In December 1984, the Yale Bush Center Advisory Committee on Infant Care Leave concluded that the infant care leave problem in the United States was so large and urgent that "immediate national action" is reqiured. The Center recommended minimum child-care leaves of six months with 75 percent pay for half that time. In January 1986, another panel, the Family Policy Panel of the Economic Policy Council (EPC) of the United Nations Association of the United States of America concluded that "maternal and parental leaves and benefits, child care services, equal employment opportunity and pay equity, maternal and child health care, and increased workplace flexibility are important components of a cohesive family policy." Following its two-year study the EPC made the following recommendations:

1. That employers should guarantee women at least six weeks of job-protected maternity leave with partial income placement and should consider providing unpaid parental leave for six months to all parent workers.

2. That employers and unions allow greater flexibility in the workplace (scheduling of work hours and leave time), and

3. That a phased-in return to work, and/or part-time employment should become options available to new mothers and to all working parents with young children at home.

The Council indicates that these policies represent a sound investment in human capital -- our greatest resource -- and are essential to promoting the continued vitality of our national economy and our nation's families.

Currently, the United States is the only major industrialized nation without a national policy on parental or maternity leave. More than 100 countries around the world have some national legislation which assures working women, and in some instances, working parents some time off at the time of childbirth and early parenting and protects them in terms of job security. There is also a growing trend to include a disability component as well as the parenting component. However, in America only five states, California, Hawaii, New Jersey, New York, and Rhode Island have some type of temporary disability insurance laws requiring employers to cover their workers against the risk of non-work related disabilities and maternity related disabilities.

AFSCME has been working to ensure the rights of women workers by advocating pay equity, helping women move out of dead end jobs, fighting sexual harassment, meeting child care needs and developing leadership skills. AFSCME has negotiated maternity, paternity and family responsibility leave provisions in many contracts. We realize that women make up a growing proportion of the workforce, and recognize that the growing number of female single heads of households are faced with growing economic concerns as well as the threat of losing their job in the event of illness.

AFSCME urges the Congress to pass H.R. 4300, the "Parental and Medical Leave Act of 1986". The legislation represents another positive step toward sound labor and family policy, and equality of the sexes in the workforce.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW

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March 18, 1986

The Honorable William L. Clay
Chairman, Subcommittee on Labor-Management Relations
Committee on Education and Labor
U. S. House of Representatives
Washington, D. C. 20515

The Honorable Austin J. Murphy
Chairman, Subcommittee on Labor Standards
Committee on Education and Labor
U. S. House of Representatives
Washington, D. C. 20515

Dear Chairman Clay and Chairman Murphy:

The UAW strongly supports the proposed Parental and Medical Leave Act of 1986 (H.R. 4300). We urge your Subcommittees to give this important legislation prompt, favorable consideration.

The bill would prevent employees from being penalized by the loss of their jobs when they are forced to take time off from work due to the birth or serious illness of a child or because they have become physically disabled. Although many union members already enjoy such protection under their collective bargaining agreements, the sad fact is that millions of unorganized workers lack these basic protections. H.R. 4300 would correct this situation and guarantee all employees the right to return to their jobs after parental or medical leave.

As a matter of simple justice and decency, the UAW submits that these rights ought to be afforded to all workers. In our judgment, the right to take parental and medical leave must be an integral component of any national policy that seeks to reinforce the family as a basic institution in our society. This is particularly true in light of the dramatic increase in the number of families with two working parents.

The UAW would like to commend you for your efforts in developing this important legislation. We would appreciate it if you would include this letter in the record for the hearing which has been scheduled by your Subcommittees for March 25, 1986.

Sincerely,

Dick Warden
Legislative Director

DW:njk
opeiu494
cc: Members, Education & Labor Committee

STATEMENT
BY
BARBARA J. EASTERLING, EXECUTIVE VICE PRESIDENT
COMMUNICATIONS WORKERS OF AMERICA
FOR THE
JOINT HEARING OF THE HOUSE EDUCATION & LABOR SUBCOMMITTEES ON LABOR-MANAGEMENT RELATIONS AND LABOR STANDARDS
ON
THE PARENTAL & MEDICAL LEAVE ACT OF 1986 (H.R. 4300)

Thank you for this opportunity to present our views on H.R. 4300, the Parental and Medical Leave Act of 1986.

The Communications Workers of America (CWA) represents some 650,000 workers employed in the telecommunications industry, public sector, health care and other service industries. We have been in the vanguard of efforts to secure family care protection for workers through collective bargaining, including a parental leave policy which covers nearly a half million of our members nationwide. Our experience with parental leave has proven that such efforts are very important, highly valued and can be designed to effectively meet the needs of workers and employers.

H.R. 4300 is a critical step toward employment practices for the modern age and we wholeheartedly endorse it as such. Today's workforce is dramatically different from that of years past. Women now comprise a majority of the labor force and, importantly, large numbers of these women are mothers with young children and infants. But beyond the statistics is the changing nature of workers' needs. Women and men are reordering their priorities; for many, this includes a significant sharing of childrearing activities. National policy must keep pace with these new concerns; H.R. 4300 is one key component of a flexible and modern employment policy.

CWA has secured significant family care and disability leave provisions for our members through collective bargaining. In 1978, for example, we incorporated parental leave into our contract with AT&T. Today, these provisions apply to more than 500,000 CWA-represented employees in AT&T and the now-separate Bell System companies.

These parental leave and pregnancy disability protections are part of an overall anticipated disability program (ADP). Under ADP, an employee is entitled to pregnancy disability leave at any time during her pregnancy, if certified by a physician as disabled. She would receive full or half pay up to 52 weeks, contingent upon length of service. This would continue at delivery and until her physician certifies her as able to return to work.

The CWA-AT&T/Bell System parental leave provisions permit the parent-employee, male or female, to take unpaid leave following the birth or adoption of a child (and following any pregnancy disability) for up to 12 months. Only the first six months, however, provide guaranteed employment reinstatement.

In our public sector contracts, we have a variety of maternity disability and parental leave policies. Most of the infant care provisions provide for unpaid leave capped at 12 months. Our members employed by the State of New Jersey, for instance, are entitled to pregnancy disability leaves up to one year, upon a doctor's certification. They may use earned leave time including sick, vacation, administrative and compensatory leave pay, but are not required to exhaust such leave before taking a leave without pay for pregnancy disability. In addition, a one year unpaid child care leave is available. Our Local representing the New York City Board of Elections has secured provisions which entitle any employee, male or female, to a maximum of 12 months leave for the care of a newly born or adopted child (up to three years of age).

In New Mexico, where we represent a number of state workers as well as employees of the Commission on the Status of Women, employees with newborn or adopted children may take parenting leaves for up to 12 months using any combination of accumulated paid leave or electing for an unpaid leave of absence. In addition, workers may use childrearing leave to accommodate demands on the parent such as illness or emotional or psychological problems with the child. This leave also may be paid or unpaid, for up to one year.

Importantly, though, many of our public and private sector members have no parental leave protection. And even those with coverage sometimes face only limited support.

We have surveyed our members and discovered that, by and large, our parental leave provisions have worked well. Nonetheless, some problems have surfaced including:

1. Unpaid leave forces many parents to remain at work because they simply can't afford to take the necessary time off -- without pay;

2. Policies that limit parental leave for adoptive children to only those children under six months of age deny employees the ability to utilize critical parental leave. As our Local in Grand Rapids, Michigan writes, "It is very difficult to adopt a child under one year of age and just as hard to find a good job or give up years of seniority and pensions in order to be an adoptive parent;"

3. The loss of seniority protection while utilizing parental leave penalizes the employee severely as it affects everything from wage rates to pensions to job bidding rights; and

4. Parental leave without maintenance of health and other essential benefits leaves the family at risk during a time of significant need.

In addition, our experience has shown that guaranteed reinstatement of the employee into the same or similar job is absolutely essential to the success of parental leave programs.

Critically, most of these concerns are addressed by H.R. 4300. This legislation would provide significant protection for millions of workers who today are faced with a wrenching choice between working to maintain a standard of living or caring for their children. American workers should not be faced with such "no win" situations.

CWA will continue to work at the bargaining table to protect our members. But a national policy, including legislation such as H.R. 4300, is equally critical to accommodating the needs of today's workers. We urge swift passage of this essential bill.

STATEMENT OF THE ECONOMIC POLICY COUNCIL
OF THE UNITED NATIONS ASSOCIATION OF THE
UNITED STATES OF AMERICA

FOR

THE HEARINGS OF THE COMMITTEE ON EDUCATION
AND LABOR
SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS

April 22, 1986

PARENTAL AND MEDICAL LEAVE ACT

The Economic Policy Council (EPC) of the United Nations Association of the United States of America (UNA-USA) was founded in 1976 as an outgrowth of the turbulent international economic scene of the early 1970's. Its mission is to sponsor a systematic and constructive involvement in international economic problems by the American private sector. The EPC is committed to representing the views of both management and labor. Its membership comprises a cross section of U.S. business and labor leaders, who, in collaboration with economists and informed professionals, are able to come to policy recommendations that have special legitimacy because management and labor represent the two most important elements in the U.S. domestic economy. The EPC is co-chaired by Robert O. Anderson, chairman of the executive committee, Atlantic Richfield Company, and Douglas A. Fraser, president emeritus, International Union--United Auto Workers.

The EPC recently issued a report on Work and Family in the United States: A Policy Initiative and the response to this study has been extraordinary. We have not only had tremendous press coverage from coast-to-coast, but have received inquiries from employers, unions, and other organizations, as well as state and local governments. It is evident that this report touched upon issues of great concern to the American public.

The EPC study panel was launched in 1984 to address the fundamental economic and demographic trends that have transformed the American family and the labor force and redefined the relationship between them. The EPC Family Policy Panel, co-chaired by Alice Ilchman (President, Sarah Lawrence College) and John Sweeney (International President, Service

Employees International Union, AFL-CIO-CLC), found that major institutions in our society--including the government, the workplace and the schools--have not recognized or responded to these critical changes. In fact, the U.S. is conspicuously alone among industrial countries in its failure to develop a comprehensive family policy to help working parents mediate the competing demands of job and family.

A major component of any family policy would have to be maternity and parental leaves and benefits. In 1984, 48 percent of all women with children under one year old were in the labor force. Ninety percent of working women of childbearing age will bear at least one child while employed, and two thirds of all new entrants to the labor force during the next decade will be women. The EPC found that women in the U.S., more frequently than men, have work histories punctuated by periods of absence from the labor force. These breaks partially explain the male/female earnings gap. Since childbirth and caring for young children at home are common reasons for the discontinuous labor force attachment of many women, maternity and parental leaves would be important mechanisms for enabling women to bear children and to remain in the labor force. Such benefits would also help many women to become self-supporting.

The Economic Policy Council, therefore, is supportive of any legislation that will enable parents to bear children and to care for their children without the risk of losing their jobs. Parental leaves should, however, not just be viewed as a benefit for parents, but also as an investment in our children--the nation's greatest resource.

The specific EPC recommendations on maternity and parental leaves and benefits, as contained in the work and family report, are as follows.

Recommendations

(1) Federal legislation should be enacted requiring public and private employers to provide Temporary Disability Insurance (TDI) to all employees. Temporary Disability Insurance provides income to people who are unable to work due to disabilities that are not job-related accidents or illnesses. Since pregnancy must be treated as any other disability (Pregnancy Discrimination Act, 1978), this would ensure that at least a minimum, partially paid leave from work at the time of childbirth would be guaranteed to all women. Currently only five states (California, Hawaii, New Jersey, New York, and Rhode Island) and Puerto Rico require that disability insurance be provided by private employers. In those states the wage-replacement ceiling varies from 50 percent to 66 percent of the employee's average weekly earnings, and the maximum level that the employee can receive ranges from $145 to $224.

While some employers voluntarily provide TDI, many do not. Since TDI is a low-cost, contributory benefit, it would not be prohibitively expensive for most companies--even small ones--to provide. In New Jersey, for example, both employers and employees contribute one half of 1 percent of the employee's first $10,100 in annual earnings to the program. The New Jersey program is currently running a surplus. Pregnancy-related disability claims accounted for

13 percent of all the state claims in 1981, the number of weeks during which disability was received averaged eleven, and the average benefit paid out was $108 per week.[11]

(2) Disability leave for all employees should be fully job-protected. Consideration should be given to raising the wage-replacement ceiling and to extending the standard length of disability leave for pregnancy from the current six to eight weeks. Minimum levels of income replacement and the duration of disability leave should become uniform among states. This would guarantee income, benefits, and the right to return to the same (or a broadly similar) job to all temporarily disabled employees.

(3) Employers should consider providing an unpaid parenting leave to all parent workers with their job or a comparable job guaranteed. This leave should extend until the child is six months old. During the employee's absence, the position could be filled by a temporary worker or the work could be redistributed among the current staff. In firms where this is not practicable, every attempt should be made, on a case-by case-basis, to provide new parents with additional leave time and flexibility in the months following the birth or adoption of a child. Parental leave,

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[11] Association of Junior Leagues, Inc., Parental Leave Options for Working Parents (New York: 1985), p. 11.

directly following the disability leave (available only to mothers to cover the period of physical disability), would be made available to either parent or could be split between them. The parental leave is explicitly designed to enable parents themselves to provide care for newborn or newly adopted infants. Federal and state governments should explore legislative means of encouraging and implementing this goal.

Although these recommendations go beyond the scope of the Parental and Medical Leave Act of 1986, this piece of legislation is clearly a step forward for the U.S. and is, obviously, supported by the EPC.

Job-protected maternity and parental leaves enable parents to choose the mode of care they prefer for their new infant and may help provide a good start in life for many children. The child care function of parental leaves is very important, especially because of the expense of infant care and the very limited availability of quality infant care arrangements.

By providing job-protected leaves to workers, we are also providing a more nurturing environment for our children, we are investing in the workers of tomorrow and in the resource that our country is most dependent on for its future economic growth and international competitiveness--human capital.

WOMEN'S LEGAL DEFENSE FUND
STATEMENT ON THE PARENTAL AND MEDICAL LEAVE ACT
H.R. 4300

before the U.S. House of Representatives
Committee on Education and Labor
Subcommittees on Labor-Management Relations and
Labor Standards

May 13, 1986

The Women's Legal Defense Fund ("WLDF" or "the Fund") is delighted to submit this statement on behalf of the Parental and Medical Leave Act of 1986 (hereinafter, the "PMLA"), H.R. 4300, which is sponsored by Chairmen Clay and Murphy along with Representatives Schroeder, Oakar, and as of this writing 82 of their colleagues from both sides of the aisle. The Fund has been an early and strong advocate of this legislation and has been instrumental in providing technical assistance and leadership to a broad ad hoc coalition of women's, civil rights, disability rights, children's advocacy, and trade union organizations on issues relating to the legal framework for parental and medical leaves.

Encouraging the accommodation of families and work is of the highest priority to WLDF's membership and constituency. Founded in 1971 by a group of feminist lawyers in Washington, D.C., to advance women's rights under the law, WLDF currently has a membership of over 1300, five lawyers on its staff, and a cadre of over 200 volunteer lawyers. Its staff and volunteers provide counseling about the law, referrals, and in selected cases pro bono legal representation to over 6000 callers each year; conduct extensive public education about women's rights; monitor enforcement by public agencies of existing laws protecting women's rights; and advocate interpretations and modifications of law that advance women's equality. We concentrate our work in the areas of women's rights in employment and in the family, as well as in other areas that involve women's economic inequality.

Indeed, because of our concern for advancing women's opportunities to achieve true economic and social equality with men, we have long worked against pregnancy discrimination in the workplace. Historically, denial or curtailment of women's employment opportunities has been traceable directly to the pervasive presumption that women are mothers first, and workers second. This prevailing ideology about women's roles has in turn justified discrimination against women when they are mothers or mothers-to-be.

While outright workplace discrimination because of pregnancy was outlawed by Congress by enactment of the Pregnancy Discrimination Act of 1978, some employers in the United States are still reluctant to accommodate their workplaces to the reality that their employees have family responsibilities as well as employment responsibilities. Yet such accommodation is necessary if women workers are to be able to exercise their right to equal employment and at the same time preserve their family lives. Despite advances in their rights, women still bear the dual burden of primary home-making and care-taking, and, increasingly, of a full-time job as well. They care for their young children, they care for their adult disabled sons and daughters, they care for their elderly and ill parents, spouses, and other relatives, they keep their homes; and they work at jobs outside the home. Indeed, 60 percent of mothers with school-age or younger children were in the workforce in March 1984.1 Because this dual burden falls on women more than men, it is working women, and especially working mothers, who suffer the consequences of the lack of workplace accommodation of family responsibilities most severely; and they suffer it both in terms of the pressures and emotional and physical drains on their daily energy, and in terms of the consequent harms to their careers.

But it is not only working mothers who suffer these consequences. Working fathers, too, find themselves risking their jobs or their "fast track" career standings if they wish to take off time, or even to limit their overtime work, for family responsibilities.2 Children suffer whenever either of their

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1 Testimony of the Association of Junior Leagues, Inc., on H.R. 2020, the Parental and Disability Leave Act of 1985, before the Subcommittee on Civil Service and the Subcommittee on Compensation and Employee Benefits of the Post Office and Civil Service Committee, and the Subcommittee on Labor-Management Relations and the Subcommittee on Labor Standards of the Education and Labor Committee, U.S. House of Representatives, at p. 3 (October 17, 1985). Most women work because of economic necessity. Bureau of National Affairs, Work and Family: A Changing Dynamic 15 (1986).

Similarly, an increasing number of working women also find themselves caught in a "generation squeeze"--caring not only for their children but also for aged disabled relatives. A "very conservative estimate" is that "well over 5 million people are involved in parent-care at any given time." Brody, "Parent Care as Normative Family Stress," 25 The Gerontologist 19, 21 (1985). The principle caregivers are adult daughters, though sons are also involved. Ibid.

2 Indeed, because of sex discrimination against men, some working fathers may find it more difficult than their female counterparts to be permitted to accommodate family responsibilities without suffering adverse employment consequences. In a recent study by Catalyst, an independent

parents is too pressured by work and financial considerations to spend necessary time with them; this problem is greatly aggravated when children have serious health conditions which demand their parents' time and attention. All working people suffer when they lose their jobs because their employers don't provide sufficient leave for temporary medical conditions; even if they don't lose their jobs, they often suffer the uncertainty of not knowing whether they will have a job to come back to when they are able to work, and at a time when they can least afford such emotional uncertainty. Finally, companies suffer too, in lost productivity and low morale, when their employees are struggling to accommodate their work and family responsibilities without sufficient support.

If we truly had a national policy of accommodating families and work, we might have a whole range of employer requirements, tax incentives, and other public policy mechanisms to ensure the effectuation of that policy.[3] At the very least, employees would have the right to paid, job-guaranteed leave for parenting and for temporary disabilities, and families would all have health insurance coverage. Paid leave for caring for elderly relatives would also be available, as an increasingly important part of

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research firm, 51.8% of companies surveyed reported that they give parental leave to mothers, but only 37.0 % reported that they provide such leave to fathers--even though such a sex-based differential clearly violates existing law. Catalyst, Report on a National Study of Parental Leaves 30, 37 (1986) (hereinafter, "Catalyst Report).

[3] A sampling of some such policy supports for families may be found in A Report on the Activities of the Select Committee on Children, Youth and Families, U.S. House of Representatives (99th Cong., 2d Sess.) (1986).

family responsibilities entails such care.[4] In addition, workplace day-care centers might be nearly universal; part-time career tracks and job-sharing might be commonplace; people who had taken leave for full-time child-rearing might be given preferences for employment opportunities, parallel to our current veterans' preference system. Indeed, as other witnesses have testified before these Subcommittees, many other countries have instituted various policies to ease the burden of child-rearing on working parents--most commonly, through some form of government-subsidized paid leave for new mothers.[5]

Creation of such a national policy is, of course, an effort of enormous scope and consequence. But the PMLA's provision of a modest, unpaid, job-guaranteed leave to be used by employees who have serious health conditions and taking time off to care for newborn or newly-adopted children or children who have serious health conditions is a small first step toward such a policy. In many ways it would be sorely deficient--primarily in its failure to provide for any income replacement for employees taking such leave. Without at least some wage maintenance, few employees will be able to afford to take as much leave for parenting as the bill permits.[6] Only the most financially secure families would be able to take advantage of the full period of leave provided.[7]

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[4] See note 1, supra. The basic arguments for allowing sons and daughters leave (at least unpaid) to care for their elderly parents and other relatives who need temporary attention at home because of a health condition are presented in Nadine Taub's well-documented article, "From Parental Leaves to Nurturing Leaves," 13 Review of Law and Social Change 381 (1984-85).

[5] Bureau of National Affairs, supra, Work and Family: A Changing Dynamic 172 et seq.

In this country, benefits for women only would probably violate the Civil Rights Act and Constitution; we would oppose them.

Nevertheless, the PMLA would be an essential first step toward meeting the needs and realities of American families today. Though unpaid, the job-guaranteed leave it provides means security and certainty for the American family faced with the serious health problems of one of its bread-winners. It means that one of the risks that currently faces families planning to have children--the risk of job loss of the mother--is eliminated. It means that fathers, too, can begin to consider taking a short period of time off to care for their newborn or newly-adopted children. It means that women deciding whether to bear children can be secure in knowing that they can continue their incomes after child-birth and the attendant disability period is over. It means that children can be sure that their parents can be with them if they face serious medical conditions. It means that all American businesses will be subject to uniform minimum requirements, with none able to cut corners at the expense of their employees' family lives. And it means that the United States will embark upon a process to underwrite the cost of paid parental and medical leave without unduly burdening either business or the families who choose to have children.

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[6] For this reason the Yale Bush Infant Care Leave Center study recommends that at least the first half of a required six-month leave be paid. Recommendations of the Yale Bush Center Advisory Committee on Infant Care Leave at 3 (November 26, 1985).

[7] The bill's failure to expand parental leave to cover leave for adult dependent care is another, serious deficiency. See notes 1 and 4, supra.

For these reasons, a broad, ad hoc coalition of organizations ranging from the Association of Junior Leagues to the AFL-CIO, the Disability Rights Education and Defense Fund to the National Perinatal Association, supports this bill.

Like these groups, the Women's Legal Defense Fund supports the PMLA because it will, if enacted, accomplish the goals of reasonably ensuring employment security for families (at least for people who have serious health conditions, and for parents) while at the same time preserving the principle of equality between the sexes. Indeed, the proposed legislation specifically states the Congressional intent "to balance the demands of the workplace with the needs of families, and to promote the stability and economic security of families" in the Findings and Purposes section (sec. 101). Following is an analysis of the specific ways in which the proposed law will fulfill the goals of accommodating the needs of America's workers as family members, and doing so without discriminating on the basis of sex.

Analysis of the PMLA

1. The Requirement of Temporary Medical Leave. The bill requires employers to provide "temporary medical leave" of up to 26 weeks a year to those employees who are unable to work because of a "serious health condition" (Sec. 104(a)). Employees who take such leave are guaranteed their job or an equivalent position when they return to work (Sec. 106(a)).

This provision is an essential component of providing reasonable and adequate job security for all employees on a non-discriminatory basis. For purposes of the bill, the measure of whether an employee is entitled to such leave is a simple two-fold test: first, is the employee "unable to perform the functions of [his or her] position"? and second, is the inability to perform those functions due to a "serious health condition"?[8] Conditioning availability of the leave on this test ensures both (1) that the leave provided does not discriminate on the basis of sex, and (2) that people who need it the most--people with serious medical conditions that prevent them from working for a limited period of time--have adequate job security.

The bill's simple two-fold test for availability of leave means that employers will be required to treat employees affected by pregnancy, childbirth, and related medical conditions in the same manner as they treat other employees similar in their ability or inability to work--in harmony with their obligations under the Pregnancy Discrimination Act of 1978. Indeed, in the one case to date in which it has interpreted that Act, the Supreme Court has made clear that its sweeping prohibition of all pregnancy-based distinctions applies even to discrimination that on its face appears to harm men.[9] With the Pregnancy

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[8] "Serious health condition" is defined in sec. 102(8) and is discussed at greater length infra. It should be noted that this test does not distinguish "voluntary" from "involuntary" medical conditions.

[9] In that case, Newport News Shipbuilding and Dry Dock Co. v. EEOC, 462 U.S. 669 (1983), the Court held that an employer's health insurance policy that covered all hospitalizations of its female employees' spouses, but limited hospitalization coverage

Discrimination Act Congress reaffirmed the basic principle that distinctions based on pregnancy are by definition distinctions based on sex, which have historically operated to harm women and to limit their employment opportunities.10 This basic principle, essential to sex discrimination law, was arrived at after a lengthy process of evolution by the lower federal courts, reversal by the Supreme Court in the now-infamous case of Gilbert v. General Electric Co., 426 U.S. 125 (1976), advocacy by a broad coalition of representatives of women's, civil rights, and labor interests, two years of consensus-building in the public and in the Congress, and finally, enactment in the form of the Pregnancy

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for pregnancy-related conditions of its male employees' spouses, violated the Pregnancy Discrimination Act.

With regard to provision of maternity disability leave, an employer's obligation under the Pregnancy Discrimination Act is to treat leave for disabilities arising from pregnancy and childbirth in the same manner as they treat leave for any other temporary disability. See, e.g., EEOC v. Southwestern Electric Power Co., 591 F. Supp. 1128 (W. D. Ark. 1984). This means that the practice of providing even no leave for any kind of medical condition would not be unlawful, unless it is found to have a disparate impact on women, in which case it may violate the Act in that manner. Cf. Abraham v. Graphic Arts International Union, 660 F.2d 811 (D.C. Cir. 1981).

10 This is often true even when they are chivalrously motivated. For example, California's law that requires leave for maternity disability only (and not for other types of disabilities), though it appears to help women, also harms them, by restricting unpaid maternity disability leave to four months (regardless of the length of leave provided for other types of disabilities), and, for employers not covered by Title VII, by, inter alia, expressly permitting refusals to hire pregnant women because of their pregnancies and limiting paid disability leave for maternity disability to six weeks even if other workers receive more paid disability leave. Brief Amici Curiae of the National Organization for Women, et al., filed April 4, 1986 in the Supreme Court in California Federal Savings and Loan Association v. Guerra, No. 85-494, at 14-17. See also Brief Amicus Curiae of the American Civil Liberties Union, et al., in the same case, at 10-23.

Discrimination Act of 1978. It has since been interpreted in an Equal Employment Opportunity Commission Guideline,[11] a definitive Supreme Court decision,[12] and numerous lower federal court decisions.[13] The PMLA wisely upholds that well-established principle, thereby protecting working women from the danger that pregnancy-based distinctions could be extended to limit their employment opportunities.

Indeed, the danger that a special "maternity leave" requirement would be used to keep women out of job opportunities is very real. Faced with the knowledge that job-protected leaves were required for working mothers and working mothers only, employers would very likely be reluctant to hire or promote women of child-bearing age.[14] Under the proposed legislation, however, because employers would be required to provide job-protected leaves for all employees in circumstances that affect them all approximately equally,15 they would have no incentive to discriminate against women.

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[11] 29 C.F.R. 1604.10 and Appendix to Part 1604. The Guideline includes a comprehensive set of 37 Questions and Answers for employers.

[12] *Newport News v. EEOC*, *supra*.

[13] *E.g.*, *Maddox v. Grandview Care Center*, 607 F.Supp. 1404 (M.D. Ga. 1985), *aff'd*, 787 F.2d 987 (11th Cir. 1986); *EEOC v. Atlanta Gas Light Co.*, 751 F.2d 1188 (11th Cir.), *reh. denied*, 765 F.2d 154, *cert. denied*, 106 S.Ct. 333 (1985); *EEOC v. Puget Sound Log Scaling and Grading Bureau*, 752 F.2d 1389 (9th Cir. 1985); *King v. TransWorld Airlines*, 738 F.2d 255 (8th Cir. 1984); *EEOC v. Wooster Brush Co. Employees Relief Assoc.*, 727 F.2d 566 (6th Cir. 1984); *Goss v. Exxon Office Systems Co.*, 33 FEP Cases 21 (E.D. Pa. 1983), *aff'd*, 747 F.2d 885 (3d Cir. 1984); *Beck v. Quiktrip Corp.*, 27 FEP Cases 776 (D. Kans. 1981), *aff'd*, 708 F.2d 532 (10th Cir. 1983); *Air Line Pilots Assoc. v. Western Air Lines*, 722 F.2d 744 (9th Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984).

[14] Brief *Amici Curiae* of the American Civil Lilberties Union *et al*., filed April 4, 1986 in the Supreme Court in *California Savings and Loan Assoc. v. Guerra*, No. 85-494, at 22 *et seq*.

The twin tests of inability to work and serious health condition also serve the second objective of the PMLA: to ensure the leave's availability to those people who need it the most and who are the least likely to be covered by existing job protections. It is generally true in the American workforce that employees are not fired if they are out sick for a short time--e.g., for a cold or the flu. Indeed, most companies provide paid sick leave for such contingencies.[16] But leave policies for more serious or extended medical reasons are less uniformly provided, and standards for their provision are often unclear or ad hoc.17 The unfair result is that women and men who are temporarily unable to work for serious health reasons may frequently lose

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15 Statistics on the incidence of loss of work due to medical reasons show that men and women are out on medical leave approximately equally: men workers experience an average of 4.9 days of work loss due to illness or injury per year while women experience 5.1 days per year. National Center for Health Statistics, C.S. Wilder, ed., Disability Days, United States, 1980 6 (Series 10-No. 143, DHHS Pub. No. (PHS) 83-1571) (hereinafter, (Disability Days").

16 U.S. Department of Labor, Bureau of Labor Statistics, Employee Benefits in Medium and Large Firms 21, Table 12 (1983); Catalyst Report at 27.

17 Many employers do provide job-guaranteed leave for extended medical absences; many have programs whereby employees receive full or part salary during medical leaves, either through self-insurance policies, short-term temporary disability insurance ("TDI") plans, state TDI programs, or some combination of these. But these provisions are far from uniform, and they may vary even within one company.

their jobs.[18] These employees include those with permanent disabilities who are fully competent and able to work, but who may require leave to address medical complications associated with their conditions. For example, an employee with arthritis who periodically requires physical therapy to continue to do his or her job would be permitted leave under the bill for that purpose. Thus, the proposed legislation would provide minimum job protection for all similarly-situated employees, so long as their inability to work is due to a "serious health condition."

The term "serious health condition" is defined in Sec. 102(8) of the bill to mean--

> an illness, injury, impairment, or physical or mental condition which involves--(A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment or continuing supervision by a health care provider.

This definition is intentionally broad, to cover various types of physical and mental conditions, such as cancer, heart attacks, and arthritis, for which employees may need leave.[19] And unlike definitions in traditional leave policies, which often focus on

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[18] A corollary is that women who are temporarily unable to work due to pregnancy, child-birth, and related medical conditions such as morning sickness, threatened miscarriage, or complications arising from childbirth, often lose their jobs because of the inadequacy of their employers' leave policies.

[19] The definition also clearly covers pregnancy and childbirth and all attendant conditions, since they generally involve inpatient care and always should involve continuing supervision by a health care provider.

"sick leave" that is necessary to "restore" an employee to health, the serious health condition definition abandons any superficial distinctions between "sickness" and "disability" and adopts instead a functional standard that turns on an employee's actual need for the leave.

It should be noted that under this definition, the illness or condition must involve care or continuing treatment or supervision at some point during the condition; the employee need not be an inpatient or undergoing treatment or supervision at the very moment of the leave in order to qualify as having a "serious health condition." Thus, an employee with a heart condition may require leave as a means of temporarily relieving the stress associated with work in order to obtain a medically necessary rest.20

Nor need an employee actually be incapacitated by his or her serious medical condition itself in order to qualify for the leave; it is enough if an employee who has a serious health condition needs to undergo medical treatment and is not able to work only in the sense that he or she needs to be out of work to obtain that medical treatment. One example is the arthritic employee described supra; another is an employee who must leave work for a prenatal examination, which would trigger leave under this section because (a) for the period of the examination, she

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20 Similarly, a woman with severe morning sickness due to pregnancy who was unable to work as a result would qualify for leave under this provision, even if she need not go to the hospital or the doctor to treat the condition each day that she suffers from it.

is unable to work, and (b) she has a serious health condition--pregnancy.21

Furthermore, as is apparent from the foregoing, the definition is broad enough to cover inabilities to work arising out of a serious health condition even if those inabilities do not occur consecutively. The availability of temporary medical leave on an intermittent basis is made explicit in Sec. 104(a)(2). Indeed, serious health conditions often occasion intermittent periods of inability to work: chemotherapy and difficult pregnancies are the classic examples.

The data on days of work lost due to illness or injury cited above show that employees are unlikely to need to use temporary medical leave for extended periods of time: the current average is 5.0 days per year.22 However, the bill contains several features that protect against excessive use of temporary medical leave. The first such feature is the limitation to "serious health conditions." Conditions that do _not_ involve inpatient

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21 Moreover, to qualify the "serious health condition" must be one which generally "involves" inpatient care or continuing medical treatment or supervision, even if in a particular situation the individual does not receive such care or treatment or supervision. For example, a medically indigent woman might not be able to afford to receive any medical treatment or supervision for her pregnancy until the very day of childbirth. But her pregnancy would nevertheless be a "serious health condition" within the meaning of the statute because it will involve or generally involves the requisite medical care.

In cases in which it is initially unclear whether an employee's inability to work is due to a "serious health condition" within the meaning of the definition, of course, the employer would have to provide leave until the nature of the condition becomes apparent.

22 See n. 15, _supra_.

care or continuing medical treatment or supervision are not covered under the proposed legislation. These include, of course, those conditions most commonly experienced, such as the common cold, the "flu," or such minor medical procedures as extraction of wisdom teeth. The key distinction between these conditions and those that are covered is that although these minor matters may require some medical treatment or supervision, they do not normally involve continuing medical treatment or supervision.[23]

A second limitation on the use of temporary medical leave is provided by its restriction to 26 weeks a year. Even if an employee has a serious health condition within the meaning of the statute and is unable to work because of it, temporary medical leave need not be provided for more than a total of 26 weeks a year.

Third, employers may require their employees to provide medical certification that they are unable to work due to a serious health condition as a condition of obtaining temporary medical leave (sec. 105). The proposed law sets out criteria for sufficient certification that will, if met, assure the employer of the truth of its employees' claims for medical leave without imposing unduly burdensome requirements on employees. Thus, any certification required must be made by the employee's own health care provider; but that health care provider must either be duly licensed or approved by the Secretary of Labor as capable of providing adequate certification (sec. 105(a)). The specific information which must be contained in the certification--including the date of commencement of the serious health condition, its probable duration, and the medical facts regarding that condition (sec. 105(b))--is the type and extent of information routinely required of health care providers by insurance carriers presently and thus should involve virtually no changes in the way doctors and other health providers currently do business.

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[23] Of course, should such conditions require inpatient care or continuing medical supervision or treatment, they would be covered.

2. The Requirement of Parental Leave. The bill requires employers to provide "parental leave" of up to 18 weeks every two years to employees in connection with the birth or adoption of a child of the employee or to care for his or her child who has a "serious health condition" (sec. 103(a)). Like employees who take temporary medical leave, employees who take parental leave under the bill are guaranteed their job or an equivalent position when they return to work (sec. 106(a)).

This provision provides something in addition to job-guranteed leave for employees for their own serious health conditions. It allows parents to take time off from work to care for their children, secure in the knowledge that they can return to their jobs after the period of time (up to 18 weeks) of childcare is over. It is not, however, available at any time during the life of a parent-child relationship, but only in three specified circumstances: because of the (a) birth, (b) placement for adoption or foster care, or (c) serious health condition, of a child of the employee. Moreover, it is available in the last of these three circumstances only if the employee uses it "to care for" the child (sec. 103(a)).

The parental leave provided for, preserving the bill's general commitment to sex equity, is of course available to any parent, regardless of sex. Thus a father as well as a mother can take parental leave because of the birth of his child; fathers and mothers could choose to take their respective leaves at the same time, or on an overlapping basis, or sequentially, as long as they take it "because of" one of the circumstances specified in the statute.[24] Perhaps one of the most cherished hopes of the proponents of the bill is that, because of its availability, increasing numbers of fathers will avail themselves of the opportunity to care for their newborn or newly adopted children, and share in the emotional rewards of so doing. Indeed, in Sweden, where parental leave has been available to both parents since 1974, the percentage of men taking such leave rose from 3% to 22% in seven years.[25]

The amount of time allowed for parental leave--18 weeks, or approximately four calendar months--is primarily based on the period that child development experts suggest as a minimum for newborns and new parents to adjust to one another. Dr. Berry Brazelton recommends four months, explaining that the early months of adjustment to a natural infant are a crucial opportunity for cementing a family.26 The Yale Bush Center recommends a leave for a minimum of six months.27 Such recommendations apply with equal force to the period necessary for a newly-adopted child and his or her new family to adjust to one another.

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[24] This would not mean, however, that an employee is free to take parental leave when his or her child is two years old, claiming that it is "because of" the child's birth.

[25] Bureau of National Affairs, Work and Family: A Changing Dynamic 174 (1986).

Furthermore, part of new parents' task during the period of adjustment is to make safe and adequate day care arrangements for their infant or newly-adopted child. Given the inadequacy of existing day care options,28 18 weeks is a realistic projection of the needs of working parents.

By the same token, the availability of as much as 18 weeks to care for a child who has a serious health condition is essential if children are to have the attention of their parents during such times of crisis.29 If a child must undergo major

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26 Brazelton, Testimony at the Hearing on Parental Leave, H.R. 2020, before the Subcommittees on Labor Management Relations and Civil Service 1, 8 (October 17, 1985).

27 Recommendations of the Yale Bush Center Advisory Committee on Infant Care Leave 3 (November 26, 1985).

28 See, e.g., Report by the Select Committee on Children, Youth and Families on "Families and Child Care: Improving the Options" (U.S. House of Representatives, 98th Cong., 2d Sess. 1984).

29 The same definition of "serious health condition" that triggers an employee's own temporary medical leave under sec. 104 applies to determine whether a parent may take parental leave under sec. 103(a)(C). Thus, a child's medical needs must be quite serious in order to give his or her parents the right to take off time from work under the legislation as written. This leaves a large and troublesome loophole in families' protection under the bill, for unless an employer permits its employees to use their own sick leave to care for children who are "just" sick, employees may lose their jobs in such circumstances. Only 36% of companies that Catalyst surveyed permit employees to use

surgery, eighteen weeks may be necessary to encompass the surgery itself and the subsequent recuperation period during which at least one parent must stay at home to nurse and care for the child. Similarly, if a child's serious health condition requires that the child receive specialized services at school or be placed in a different school setting that provides those services, the parents may need the kind of leave provided by the PMLA--and which is not otherwise provided by traditional leave policies--to make satisfactory arrangements.30

Further, for parents of children with disabilities, the choice as to whether to keep them at home or to place them in institutions will often depend upon whether the parents are able to keep their jobs yet obtain sufficient leave to provide their children with the support and assistance they require.

> The overwhelming majority of families now keep their [disabled] children at home. A major reason for this shift away from institutionalization is that study after study has proved the debilitating effects of institutionalization and its costliness. On the other hand, the individual with disabilities who is allowed to remain in a family environment has a much greater likelihood of learning the skills necessary for independence and a fulfilling life in the community.31

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their sick days for children's illnesses, and another 51% oppose the practice. Catalyst Report at 78.

30 Cf. Education of the Handicapped Act, 20 U.S.C. Sec. 1401.

31 Testimony of Bonnie Milstein, Co-Chair, Civil Rights Task Force of the Consortium of Citizens with Developmental Disabilities before the House Committee on Education and Labor Subcommittees on Labor-Management Relations and Labor Standards Hearing on the Parental and Medical Leave Act, H.R. 4300, at 5 (April 22, 1986).

Moreover, the 18-week period reflects a fair compromise between actual practice in the United States and the needs and preferences of many working women. Existing data show that most companies in the United States do offer parental leave, at least to mothers of newborns, in connection with the leave they provide for the medical leave associated with pregnancy and childbirth. A 1984 study of a sample of the nation's largest 1500 companies conducted by Catalyst, an independent research firm, showed that over half of these companies offer unpaid parental leave (in addition to the medical leave associated with pregnancy and childbirth); of these, 24.3% offer such leave of three months' duration, while 28.2% offer such unpaid parental leave of four to six months' duration.32 Given the current levels of availability of temporary medical leave and of parental leave (at least for mothers), the bill's requirement of 18 weeks' parental leave is not unreasonable. Indeed, providing sufficient parental leave not only benefits employees, but also benefits employers by ensuring productivity:

> A program that brings employees back to work before they are rested and ready may actually be more deleterious to productivity than allowing an extended leave. The odds are good that leave-takers who return too soon will not be fully productive or will make costly and needless mistakes....When insufficient leave

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32 Catalyst Report at 31. In a 1981 Columbia University study of a broader sample of employers, 61% of employers surveyed provided a total of two to three months' leave for maternity disability and parental leave combined, while 27% provided four or more months. Kamerman, Kahn, and Kingston, Maternity Policies and Working Women 57, 58 (Columbia University Press 1983).

> time results in an employee's attrition, the cost of replacing the employee can be substantial.33

Many children in the United States today do not live in traditional "nuclear" families with their biological father and mother. Increasingly, the people who care for children--and who therefore find themselves in need of workplace accommodation for their childcare responsibilities--are these children's adoptive, step-, or foster parents, or their guardians, or sometimes simply their grandparent or other relative or adult. The legislation deals with such families by tying the availability of parental leave to the birth, adoption, or serious health condition of a "son or daughter," and then defining the term "son or daughter" to mean "a biological, adopted, or foster child, stepchild, legal ward, or child of a de facto parent..." (sec. 102(9)). This definition will ensure that the employees who are entitled to parental leave are as a practical matter the people who have the actual, day-to-day responsibility for caring for a child, or who have a biological or legal relationship to the child. Thus an employee who lives with, cares for, and acts as parent to her grandchild would be entitled to parental leave should the child need care for a serious health condition, as would an employee who is divorced from his child's mother and does not have custody of the child.34

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33 Catalyst, The Corporate Guide to Parental Leaves 25 (1986).

34 The definition of parent finds precedent in a similar definition in the federal regulations implementing the Education for Handicapped Children Act, *supra*. In defining the term, the

For an employee to be eligible for parental leave, the child in question must be under 18 years of age unless that child is "incapable of self-care because of mental or physical disability" (sec. 102(9)).35 This provision recognizes that some parents may need to take time off from work to care for the serious health conditions of their sons and daughters who have reached legal maturity, but are incapable of self-care. Many parents will take advantage of this leave to help adult sons and daughters who are experiencing serious health conditions to establish independent living arrangements in, for example, group homes and other residential facilities that provide support services.

Because so many new parents wish to work part-time for some period of time after the birth or adoption of a child,36 the bill permits parental leave to be taken on a "reduced leave schedule," as long as the total period over which the leave is taken does not exceed 36 weeks (sec. 103(a)(2)). This permits new parents to work half-time for double the length of full-time leave permitted; and the flexibility of the "reduced leave schedule"

Department of Education explained--

> The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or step-parent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

42 F.R. 42479.

35 This provision would only come into play for parental leave to care for a child who has a serious health condition under sec. 103(a)(1)(C).

36 Catalyst Report at 53.

definition allows other arrangements at the employee's option.[37] Similarly, this flexibility may be extremely important to employees taking parental leave to care for children who have serious health conditions--for example, if they can arrange for alternative nursing care for only part of a day, or if they must miss work once every two weeks to take a child for chemotherapy treatment.

An employer may deny a reduced leave schedule only when it would "disrupt unduly the operations of the employer" (sec. 103(a)(2)(B)). To show "undue burden," employers will have to show by clear and convincing evidence a substantial interference with their business operations; mere cost will not be enough.[38] This standard fairly reconciles parents' need for the part-time option with employers' need for stability and predictability in their workforces. Indeed, many employers now find that part-time work by a formerly full-time employee is a useful and satisfactory way to deal with leaves of absence and the

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> [37] The term "reduced leave schedule" means leave scheduled for fewer than an employee's usual number of hours per workweek or hours per workday.

Sec. 102(6). Under this definition, it is clear that such part-time work must be scheduled--i.e., an employee must establish a routine and regular schedule of work. This further protects employers from unpredictability in their workforce.

[38] Mere cost is not a defense under the PMLA for the same reasons as cost may not be used to justify unlawful discrimination under Title VII of the 1964 Civil Rights Act: to permit such a defense would frustrate the remedial purposes of the statute. Cf. Newport News, supra, 462 U.S. at n. 26; Los Angeles Dept. of Water and Power v. Manhart, 435 U.S. 702, 716-17 (1978).

inevitable transitions attendant thereto.39 Rather than disrupt their operations, the vast majority of employers should find that a part-time schedule for employees returning from parental leave actually enhances their ability to manage their workloads.

3. Employment and Benefits Protection. The job guarantee of the PMLA is contained in section 106, which requires that any employee taking either temporary medical or parental leave is "entitled, upon return from such leave," to be restored to his or her previous position or to a "position with equivalent status, benefits, pay, and other terms and conditions of employment" (sec. 106(a)(1)).

To accomplish the central Congressional purpose of providing job security to workers taking such leaves, the standard for assigning employees returning from leave to jobs other than the precise positions which they previously held is, appropriately, a tough one. First, the standard encompasses all "terms and conditions" of employment, not just those specified. Thus such significant aspects of the employee's previous position as working conditions, office assignment, place in chain of command, number of people the employee supervises or is supervised by geographic location, and task responsibility all must be maintained in any alternative position to which an employee

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39 Sixty percent of the companies surveyed by Catalyst have allowed some employees to return to work part-time. Catalyst Report at 53-54.

returning from leave is assigned.40 Second, the standard of "equivalence"--not merely "comparability" or "similarity"--necessarily implies that a strict correspondence to these terms and conditions of an employee's previous position is required.

4. Enforcement. Because the periods of temporary medical and parental leave are relatively short, the system set up to ensure their availability requires: (1) a readily-available enforcement mechanism that can be accomplished very quickly; and (2) effective deterrents to failure to comply with the provisions of the statute. The enforcement scheme set up in the PMLA meets both these criteria.

The basic components of the PMLA's enforcement system are administrative investigation and hearings containing strict deadlines,41 alternative judicial enforcement,42 and

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40 The PMLA's standard for evaluating job equivalence under Sec. 106(a)(1)(B) parallels Title VII's standard for evaluating employment practices (in Sec. 703(a)(1), 42 U.S.C. 2000e-2(a)(1)), which prohibits "discriminat[ion] with respect to [an employee's] compensation, terms, conditions, or privileges of employment." The Title VII standard has been interpreted very broadly, to cover not only such obvious terms or conditions as compensation and seniority, but also such intangibles as status, health and safety, work hours, shift assignments, overtime opportunities, availability of rest and lunch periods, substantive work responsibilities, level of supervision, working environment, promotion and transfer rights, performance and other standards, discipline, etc. Similarly, the PMLA's reference to "terms and conditions" must be broadly interpreted to achieve its purpose of job security for employees who take temporary medical or parental leave.

41 An individual who believes he or she has been denied any of the rights guaranteed by the PMLA (including but not limited to restoration to the same or an equivalent position following a temporary medical or parental leave, termination of employment during such leave, or interruption of health insurance benefits), or who has reason to believe that he or she will be denied any

authorization of significant penalties for noncompliance.[43] The availability of an administrative scheme means that aggrieved employees will have easy access to an agency mandated to investigate and prosecute their claims. The Department of Labor has offices in many cities and a great deal of experience in the administrative enforcement of federal employment standards. At the same time, the imposition of strict time deadlines for action and the requirement of complaint issuance upon a preliminary finding of violation will avoid many of the problems of delay and inaction that often plague administrative enforcement. Similarly, the availability of alternative judicial enforcement

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such rights, files a charge with an office of the Department of Labor Sec. 108 (b). The charge must be filed within a year; third-party charge may also be filed on behalf of a person harmed. The Secretary of Labor must investigate the charge and make a determination within 60 days; if the determination is that there is a reasonable basis for the charge, the Secretary must issue and prosecute a complaint (Sec. 108(c)(1), (c)(2), and (e)(1)). An on-the-record hearing before an administrative law judge ("ALJ") must begin within 60 days of the issuance of the complaint (See 108 (e)(2)). The ALJ's findings, conclusions, and order for relief must be issued within 60 days of the hearing's end (unless the ALJ provides a written reason for delay beyond 60 days) (Sec. 108 (f)). The ALJ's decision becomes the final agency decision unless appealed and modified by the Secretary; the final agency decision may be reviewed in a federal court of appeals.

[42] An individual may file an action to enforce the PMLA directly in federal or state court either as an alternative to administrative enforcement, or if the Secretary has dismissed or failed to take action upon his or her charge (Secs. 108 (c)(6), and 109).

[43] The relief specified in Sec. 111 of the bill is available in either administrative or judicial proceedings. It includes injunctive relief (including temporary restraining orders), back pay and other lost out-of-pocket expenses, liquidated damages or general damages at least equal to twice the amount of actual damages, and attorneys' fees and costs. Awards of money damages are mandatory if a violation is found.

permits an employee to choose to avoid the agency, or to abandon the agency procedure ,if it does not result in action quickly enough.

Just as important is the relief provided. The availability of attorneys' fees to prevailing parties will ensure both that attorneys will be willing to represent employees to assert their rights under the PMLA[44] and that employers will be deterred from violating the provisions of the law. Similarly, the provision of mandatory money damages serves the twin purposes of ensuring that employees will be recompensed for their actual costs and for the pain and suffering of being denied and subsequently having to assert their rights, and of adding to employers' incentives to comply.

Analysis of the PMLA's Consequences to Employers

From the standpoint of employers, enactment of the Parental and Medical Leave Act will not be a substantial burden. A careful review of current employer practices casts doubt on many of the concerns about burden that some employers have expressed.

First, as already shown, many if not most employers already provide some form of leave akin to that which the legislation would mandate. Ninety-five percent of the companies surveyed by Catalyst grant short-term disability leave (38.9% fully paid, 57.3% partially paid, and 3.8% unpaid); 90.2% of them continue full benefits during the period; 80.6% of them guarantee the same or a comparable job. For these companies, leave length appears to be tied to the employee's medical condition. Unpaid parental leave was provided by 51.8% of the companies, with 59 providing leave of three months or more.[45]

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[44] Due to the high cost of legal services, many middle-class and even upper-middle class people find themselves unable to afford representation in employment-related disputes; this is *a fortiori* true for people in poverty, especially since federal funding for legal services programs has been reduced.

Similarly, most employers' health insurance policies also already continue health insurance coverage during employees' leaves. In fact, according to a comprehensive study published in 1984 by the Employee Benefit Research Institute, 98.6% of health insurance plan participants in establishments of 100 or more employees have coverage that continues for some period when they become disabled.[46] A Columbia University study found that 55% of employers continue health insurance coverage during "maternity leave" (apparently referring to some combination of temporary medical and parental leave).[47] It thus appears that the majority of employers will not have to alter their health insurance policies significantly, if at all, to come into compliance with the health insurance continuation requirement of the PMLA.

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[45] Catalyst Report at 27-31. See also notes 17 and 30 supra.

[46] Chollet, Employer-Provided Health Benefits: Coverage, Provisions and Policy Issues 56-57 (Employee Benefit Research Institute 1984). Indeed, continuation of health insurance benefits is frequently provided even for employees who retire: 67% of plan participants in establishments of 100 or more employees have health insurance continuation for some period (34.4% have continuation indefinitely) if they retire before age 65, and 59.6% have such continuation (57.3%) indefinitely) if they retire after age 65. Id. at 59.

[47] Kamerman, Kahn and Kingston, Maternity Policies and Working Women 61 (1983). In addition, 44% of companies surveyed continued health insurance during "maternity leave" with an employee contribution. Only one per cent of companies providing health insurance to their employees did not in any way continue health insurance coverage for the employee during the employee's leave. Indeed, it was usual for the companies also to continue life insurance and pension benefits coverage during the period of leave as well. Ibid.

In addition, employers' fears that they will be constantly faced with employees taking temporary medical or parental leave are groundless. In spite of the current widespread availability of such leave, employees do not take leave in excessive amounts. The 1980 National Health Survey found that employed persons between the ages of 17 and 64 experience an average of 5.0 days lost from work per person per year due to illness or injury.48 Nor will the addition of leave for parenting will significantly increase lost work days. Almost one-third of the companies included in the Columbia University study indicated that no employee had been on "maternity leave" that year; another third reported that no more than two employees had taken such leave that year.49 In any event, and unfortunately, very few employees will be able to afford to take unpaid medical or parental leave at all, or for as long as the full allotment permitted by the PMLA.

Another common argument against the legislation is its supposed burden on small employers. But the smallest of employers are already exempted by the legislation.50 Indeed,

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48 Disability Days, supra, at 23, Table 3.

49 Kamerman, et al., at 62. More than 75% of companies in the Catalyst survey reported that the combined medical and parental leaves related to maternity actually taken by women employees averaged less than three months. Catalyst Report at 32.

50 H.R. 4300 exempts employers not in interstate as well as employers in interstate commerce that have fewer than five employees. Sec. 102(3)(A).

this exemption already means that almost 5,250,000 employees will not have the protections afforded the rest of the workforce,51 even though those employees are disproportionately women and minority men--often those segments of the employee population who most need the protections that the PMLA provides.52

Moreover, it has been our experience that small employers often do accommodate the family needs of their employees by granting them paid or unpaid leaves with job guarantees.53 Even if job guarantees are not promised, many if not most small employers attempt to place employees who have been out of their jobs due to medical reasons or parenting needs either in their previous jobs or in very similar ones. In many instances, small employers may be more, rather than less, responsive to the health and family needs of their employees, because of the often-close relationships that develop between small business owners and their employees.54

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51 U.S. Dept. of Commerce, Bureau of the Census, County Business Patterns 1983, United States Table 1B (1985).

52 Kamerman, et al., at 49.

53Data on small business leave practices are not readily available due to the fact that small employers do not generally have written policies about employee absences and tend to make policy decisions on an ad hoc, case-by-case basis.

54Compare the results of a 1985 Working Mother Magazine survey of provision of leave for caring for sick children:

> [T]he smaller the company, the more flexible and understanding the employer seems to be. This was surprising because big companies get a lot of credit and publicity for their supposedly more generous benefits. And while small companies might be expected to be run with a more personal touch, they still are more likely to have their business disrupted by the absence of an employee than a large company would be.

If small employers did not provide benefits to their employees comparable to those provided by larger companies, it could disserve their interests and exacerbate a problem that small employers already face. A major reason that many employees leave small businesses for larger ones is the disparity in benefits.[55] To attract and keep excellent employees, small businesses are going to have to provide at least the minimal leaves required by the PMLA in any event.

Nor does the PMLA necessarily entail out-of-pocket costs to employers, large or small.[56] The legislation does not require employers to pay the salaries of their employees who take temporary medical or parental leave. Instead, it merely requires that employees who take such leaves be reinstated into their positions at the expiration of the leaves.

The "cost," if any, to employers of this requirement is a management cost. Managers will, certainly, have to deal with the displacement resulting from the absences of employees out on leave. Yet managers already deal on a regular basis with employees' leaving their positions, temporarily or permanently. Replacements are found; job responsibilities are reorganized; work is rescheduled; temporaries are hired. Indeed, well-run

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Clinton, "Guess Who Stays Home with a Sick Child?" Working Mother 56-57 (Oct. 1985).

[55] The State of Small Business: A Report of the President 249 (U.S. Government Printing Office 1985).

[56] The one exception is the cost of continuing health insurance coverage for employees on leave; however, as shown above, as most health insurance policies already provide this feature, it involves little if any additional cost.

establishments, anticipating the inevitable employee absenteeism (whether due to sickness of a few days or longer-term leaves), plan their staffing and workload distribution with sufficient overlap to conduct their business adequately at all times.

Furthermore, parental leave and many kinds of temporary medical leave have the advantage of advance notice, so that they can be planned for and coordinated within existing company needs. Catalyst confirms this reality; as one human resources executive As one human resources executive who participated in recent Catalyst survey commented, "Coping during the disability of a coworker is always a burden, but it's less so with maternity because you can plan ahead."[57]

Finally, potentially enormous long-range costs to employers and to society at large will result from failure to provide job-guaranteed leaves for temporary medical conditions and for parenting. First is the emotional cost to children if parents are unable to take even the minimally necessary time to be with them at birth, adoption, or times of serious health-related experiences. Second and perhaps equally important is the cost to working people and their families of losing their jobs when they themselves are temporarily unable to work due to serious health conditions. Both of these costs also have very real consequences for our welfare, unemployment insurance, and other public benefits systems, upon which employees forced out of their jobs must rely in order to survive. In addition, failure to provide adequate leave protection increases employee dissatisfaction and turnover, thus increasing direct costs to business.[58]

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[57] Catalyst, The Corporate Guide to Parental Leaves 85 (1986). Catalyst reports on a range of means for handling the work of absent employees currently in use by companies, including hiring of outside temporary workers, rerouting of work to others in the department, temporary replacement from within the company, rerouting only of urgent work with the rest being held, work being sent home to the leave-taker, and filling of the leave-taker's position permanently and transferring her to another position upon her return. *Id*. at 85-104.

People should not be at risk of losing their jobs if they temporarily experience a serious health condition, or if they care for newborn or newly-adopted children or children experiencing serious health conditions. Because it begins to address this risk, the Women's Legal Defense Fund strongly supports the Parental and Medical Leave Act, and urges its swift enactment.

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[58] The cost of turnover for any position can reach 93% of the position's one-year salary. Catalyst, The Corporate Guide to Parental Leaves, supra, at 25.

APW
American Postal Workers Union, AFL-CIO
817 14th Street, N.W. Washington, D.C. 20005

Moe Biller, President
(202) 842-4246

MAY 21 1986

May 20, 1986

The Honorable William Clay
Chairman, Subcommittee on
Labor-Management Relations
Committee on Education and Labor
2451 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of the over 335,000 members of the American Postal Workers Union, I would like to take this opportunity to express my support for H.R. 4300, the Parental and Medical Leave Act. This milestone legislation, introduced in March of this year, would provide up to 18 work weeks of non-paid parental leave for working men and women. H.R. 4300 also authorizes up to 26 weeks of non-paid sick leave during any twelve month period, with a guarantee that the worker's health insurance coverage will be continued during the period of the illness. We believe that the enactment of such legislation is long overdue.

There is presently no national policy in the United States on the use of leave for purposes of child care. The Pregnancy Discrimination Act of 1978 requires that employers who provide disability leave or insurance treat pregnancy like any other disability, but provides no guidance for the granting of parental leave.

The United States, with its superior technology and highly skilled workforce, remains far less advanced than other less-developed countries in providing for the social welfare of its workforce. The lack of a clear national policy on parental leave is one example of how we lag behind many other countries, most notably those in Europe, where workers are entitled to paid parental leave during which their jobs, seniority and pensions are fully protected.

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In Norway, for example, female workers may be granted up to 18 months of maternity leave at full salary, and male parents may use up to 12 weeks of paid leave for child care purposes. Should either parent desire additional time to care for the child, an additional year of leave may be granted. Workers in Sweden, Finland and Germany may be authorized between seven and 10 months of child care (parental) leave, at up to 90 percent of salary. Even the European countries which are less generous with such benefits, Austria, Hungary and Czechoslovakia, are more generous than the United States.

The United States Postal Service has a present policy which provides a short period of maternity leave, but the leave-however long its duration-is unpaid unless the worker has enough sick leave to cover it. Postal Service policy is, at best, sporadic on the granting of paternity leave. We have attempted to improve these benefits at the negotiations table and will revisit the issue again when negotiations begin again next year.

In the interim, the passage of H.R. 4300 will fill the gap created by the absence of a national legislative policy on parental and medical leave, and we strongly support the enactment of this legislation.

On behalf of the American Postal Workers Union, I appreciate the opportunity to submit our views on H.R. 4300 and respectfully request that this letter be included in the hearing record on the legislation.

Sincerely yours,

Moe Biller

Moe Biller
General President

MB/trs

NATIONAL ASSOCIATION OF LETTER CARRIERS
AFL-CIO

VINCENT R. SOMBROTTO
PRESIDENT

100 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001
202 393-4695

TESTIMONY

BY

VINCENT R. SOMBROTTO, PRESIDENT
NATIONAL ASSOCIATION OF LETTER CARRIERS

before the

HOUSE SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS

concerning

H. R. 4300, The Parental and Medical Leave Act of 1986

April 22, 1986

CONGRESSIONAL TESTIMONY

Mr. Chairman. Thank you for holding hearings on H.P. 4300, the Parental and Medical Leave Act of 1986. The National Association of Letter Carriers (NALC), which represents more than 275,000 active and retired city letter carriers, would like to address the section of the bill which deals with parental leave. It is a problem for letter carriers and was a bargaining point in our contract negotiations.

The parental leave portion of H.R. 4300 would allow civil service employees 18 administrative work weeks of leave without pay because of the birth of a child, the adoption or foster care of a child, or to care for an employee's seriously ill child. The employee using parental leave would be entitled to return to the same position held prior to the absence.

This is a fundamentally sound change in policy. We are a country which prides ourselves on being "pro-family," yet we are woefully behind most other industrialized countries in parental leave, a basic necessity for parents and children. Almost all other industrialized countries -- and many developing countries -- established paid leave as a national policy. Yet the United States has no such policy.

The "average" American family-- and the average letter carrier's family-- no longer is the "Father Knows Best" image of a working father and housewife mother. A majority of women are now part of the work force. In 1984, 48 percent of all women with children under one year old were in the labor force. The majority of new families have two working parents. Two incomes are not a luxury but a necessity. There are numerous single-parent heads of households. Fathers are becoming more involved with raising children. These are some of the realities of American life in the 1980's. Unfortunately, the laws governing parental leave have not changed with the changing family structure in American society; they are relevant to an earlier period in American history.

Policy in the U.S. Postal Service (USPS) should reflect the latest demographic changes. However, the parental leave policy is a good example of an poorly planned, anachronistic approach to parental leave. The mother of a newborn is allowed to use sick and annual leave (if she wants to maintain her income), or she can take a limited amount of leave without pay. In the case of paternal or adopting parents, the individual can use annual leave or leave without pay. The length of time is determined by a consultation between the individual, the private doctor and the USPS, which employs doctors. There is no standard practice, only individual determination. Thus, two individuals with similar circumstances can get different determinations. Such a policy puts the cart before the horse. While it is important to base determinations on individual needs, those decision should flow from standardized procedures.

The NALC is convinced that both the needs of the Postal Service and letter carriers can be accommodated by a fair parental leave policy. Some private corporations already have parental leave policies which work to the advantage of both employer and employee. The current situation forces individuals to pit job security against family needs, often resulting in family tragedy. We would like to work toward a situation where the USPS and letter carriers can balance both factors.

Employees are asking for the right to raise a family. The fulfillment of that desire will benefit society as a whole because parental leave is a healthy investment in the future of our country -- namely, our children. Parental leave provides a direct benefit to society by helping to reduce physical and mental problems for father, mother and child. It also will raise employee morale.

The government should catch up to private sector leaders in this area; some large and small private corporations have already had resounding success with parental leave.

Thank you, Mr. Chairman. If you have any further questions, I will answer them.

FAMILIES FOR PRIVATE ADOPTION

Post Office Box 40004 • Washington, DC 20016

March 25, 1986

Families for Private Adoption is pleased to give a strong endorsement to H.R. 4300, The Parental and Medical Leave Act of 1986. The need for Americans to have reasonable leave with job security to participate in early childrearing is acute, as illustrated by the data supporting this proposal. The extension of job-protected leave to adoptive parents is long overdue.

The thousands of individuals and couples who have adopted children have endured a far more difficult process to build their families than those who have given birth. Many are forced to choose between the financial security provided by employment and their desire for a child when an adoption or social service agency mandates time off from a job in return for the placement of a child.

Many who disagree with the dictates of an adoption or social service agency turn to private or independent adoption, the legal adoption of a child without using an agency. Yet many of those adoptive parents also are forced into a choice between employment and childrearing when their requests for job-protected leave to bond with their new child are denied. Because of the out-dated notion that maternity leave applies only to those physically disabled by pregnancy, adoptive parents often are unfairly cheated of the family-building experiences that biological parents are permitted to enjoy.

The experiences of some members of **Families for Private Adoption** in the Maryland, Virginia and District of Columbia area reflect the spectrum of leave policies regarding adoption.

* One adoptive mother had the choice of returning to work when her two-week vacation expired or losing her job.

* Another adoptive mother, whose employer had no provisions for even maternity leave, was not permitted any job security when taking a four-month leave of absence and was assigned to less desirable working hours upon her return to work.

* No adoptive fathers except those self-employed have been allowed to take any form of childrearing or parenting leave, only vacation leave.

* One adoptive mother, initially denied a leave of absence for adoption purposes, successfully petitioned her employer's board of directors to amend the employment policies to include adoption as a justifiable reason for awarding leave.

* A similar appeal by another adoptive mother employed by another firm was turned down, and she took a costlier form of leave: unemployment.

The members of **Families for Private Adoption** urge support for H.R. 4300 with extension of those benefits to adoptive parents.

* * * * * * * * * * * * * * *

Families for Private Adoption is a non-profit, support group for those involved or interested in private or independent adoption. For more information, contact either co-president: Robyn Quinter 301/924-2471 or Linda Shriber 301/320-3113.

H.R. 4300

WRITTEN TESTIMONY

NEW JERSEY DEPARTMENT OF LABOR

OPERATION AND ADMINISTRATION OF THE TEMPORARY DISABILITY BENEFITS PROGRAM

Submitted by:

George M. Krause
Acting Commissioner

THE NEW JERSEY TEMPORARY DISABILITY BENEFITS LAW WAS ENACTED IN 1948 AS A SUPPLEMENT TO THE UNEMPLOYMENT COMPENSATION LAW. ITS PURPOSE IS TO PROVIDE FOR CASH PAYMENTS TO WORKERS WHO CANNOT PERFORM THEIR JOB DUTIES DUE TO NON-WORK RELATED ILLNESS OR INJURY. TOGETHER, THE UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE PROGRAMS IMPLEMENT THE STATE'S POLICY OF PROTECTING WORKERS AGAINST TEMPORARY LOSS OF INCOME CAUSED BY INVOLUNTARY UNEMPLOYMENT.

NEW JERSEY IS ONE OF ONLY FIVE STATES WHICH HAS A MANDATORY TEMPORARY DISABILITY INSURANCE PROGRAM. THE OTHERS ARE CALIFORNIA, NEW YORK, HAWAII, AND RHODE ISLAND. PUERTO RICO ALSO HAS A COMPARABLE PROGRAM.

VIRTUALLY ALL WORKERS COVERED UNDER THE UNEMPLOYMENT COMPENSATION LAW (UC) ARE ALSO COVERED UNDER THE TEMPORARY DISABILITY BENEFITS (TDB) LAW. THE ONE MAJOR EXCEPTION TO THIS INVOLVES EMPLOYEES OF LOCAL GOVERNMENTAL ENTITIES WHERE DISABILITY COVERAGE FOR EMPLOYEES IS OPTIONAL. THERE ARE THREE DISTINCT DISABILITY PROTECTION PROGRAMS ESTABLISHED UNDER THE LAW. THE BASIC PROGRAM FOR EMPLOYED WORKERS (THOSE INDIVIDUALS WHO ARE DISABLED WHILE IN EMPLOYMENT OR WITHIN 14 DAYS OF THE LAST DAY OF WORK) IS CALLED THE STATE PLAN. EMPLOYERS ALSO HAVE THE OPTION OF ESTABLISHING A PRIVATE PLAN PROGRAM WHICH MAY BE INSURED BY THE EMPLOYER, AN INSURANCE COMPANY, OR A UNION WELFARE FUND.

PRIVATE PLANS MUST BE APPROVED BY THE DEPARTMENT OF LABOR AND MUST BE AT LEAST AS LIBERAL WITH RESPECT TO BENEFIT AMOUNTS, ELIGIBILITY REQUIREMENTS AND THE DURATION OF PAYMENTS AS THE STATE PLAN. IN FACT, A NUMBER OF PLANS PROVIDE HIGHER BENEFITS AND MORE

LENIENT ELIGIBILITY REQUIREMENTS THAN THE STATE PLAN. THERE ARE CURRENTLY 5200 PRIVATE PLANS COVERING APPROXIMATELY 600,000 WORKERS.

THE THIRD DISABILITY PROTECTION PLAN ESTABLISHED BY LAW IS CALLED THE DISABILITY DURING UNEMPLOYMENT PROGRAM. AS ITS NAME IMPLIES, THIS PROGRAM PROVIDES BENEFITS TO UNEMPLOYED INDIVIDUALS WHO BECOME DISABLED MORE THAN FOURTEEN DAYS AFTER THE LAST DAY OF WORK.

THIS PROGRAM IS ACTUALLY ESTABLISHED UNDER SECTION 4 OF THE UNEMPLOYMENT COMPENSATION LAW AND ALL ELIGIBILITY REQUIREMENTS OF THAT LAW MUST BE MET BY THE INDIVIDUAL, EXCEPT FOR THAT PERSON'S INABILITY TO WORK.

THE DISABILITY INSURANCE PROGRAM IS FUNDED JOINTLY BY EMPLOYERS AND WORKERS. IN 1986, WORKERS WILL PAY CONTRIBUTIONS AT THE RATE OF 0.5% ON A TAX BASE OF $10,700. THIS AMOUNTS TO A MAXIMUM PAYMENT OF $53.50 PER WORKER. EMPLOYERS' RATES VARY WITH INDIVIDUAL EXPERIENCE AND THE CONDITION OF THE DISABILITY BENEFITS FUND AND CAN RANGE FROM 0.1% to 1.1% ON THE SAME TAX BASE OF $10,700. THE AVERAGE EMPLOYER TAX RATE IS APPROXIMATELY 0.5%. EMPLOYERS OPERATING APPROVED PRIVATE PLANS ARE NOT REQUIRED TO CONTRIBUTE TO THE FUND BUT AN ANNUAL ADMINISTRATIVE COST ASSESSMENT NOT EXCEEDING 0.05% OF PRIVATE PLAN TAXABLE WAGES IS CHARGED ANNUALLY TO PRIVATE PLAN EMPLOYERS.

WORKERS COVERED UNDER A PRIVATE PLAN DO NOT CONTRIBUTE TO THE DISABILITY BENEFITS FUND. HOWEVER, THEY MAY CONTRIBUTE NO MORE THAN 0.5% TO THE PRIVATE PLAN PROVIDED A MAJORITY OF WORKERS COVERED UNDER A PLAN HAVE GIVEN THEIR APPROVAL IN WRITING.

THE TDB LAW PROVIDES THAT TO QUALIFY FOR BENEFITS AN INDIVIDUAL MUST HAVE HAD AT LEAST 20 WEEKS OF COVERED EMPLOYMENT (WITH EARNINGS OF AT LEAST $76 IN EACH OF THOSE WEEKS) IN THE ONE YEAR PERIOD (BASE YEAR) PRECEDING THE COMMENCEMENT OF THE DISABILITY. ALTERNATIVELY, IF THE INDIVIDUAL DID NOT HAVE THE MINIMUM OF 20 WEEKS OF EMPLOYMENT, HE OR SHE COULD QUALIFY WITH EARNINGS OF AT LEAST $4600 IN THE BASE YEAR. THE WEEKLY BENEFIT RATE IS COMPUTED BY DETERMINING THE INDIVIDUAL'S AVERAGE WEEKLY WAGE DURING THE EIGHT WEEK PERIOD PRIOR TO THE DISABILITY AND BY MULTIPLYING THAT AMOUNT BY 66 2/3%. THE MAXIMUM WEEKLY BENEFIT AMOUNT IS 53% OF THE STATEWIDE AVERAGE WEEKLY WAGE. IN 1986, THE MAXIMUM WEEKLY RATE PAYABLE IS $200. BECAUSE THE DISABILITY DURING UNEMPLOYMENT PROGRAM FALLS WITHIN THE PROVISIONS OF THE UNEMPLOYMENT COMPENSATION LAW ITS BENEFIT FORMULA IS COMPUTED DIFFERENTLY. THE WAGE REPLACEMENT RATE IS 60% AND THE MAXIMUM AMOUNT PAYABLE IN 1986 IS $214.

IN 1985, THE STATE PLAN AND DISABILITY DURING UNEMPLOYMENT PROGRAMS DISBURSED APPROXIMATELY $180 MILLION IN BENEFITS. THE AMOUNT OF CONTRIBUTIONS BY EMPLOYERS AND WORKERS TOTALLED $193.4 MILLION. THE TRUST FUND BALANCE STOOD AT $75.1 MILLION ON DECEMBER 31, 1985. A $50 MILLION TRANSFER TO THE UNEMPLOYMENT TRUST FUND WAS MADE IN 1985 WHICH WAS USED TO HELP PAY OFF THAT PROGRAM'S OUTSTANDING LOAN FROM THE FEDERAL GOVERNMENT.

GENERALLY, THE COST OF OPERATING THE DISABILITY INSURANCE PROGRAM IS PAID FOR DIRECTLY BY THE DISABILITY BENEFIT FUND AND IS APPROPRIATED BY THE STATE LEGISLATURE. NO GENERAL STATE REVENUES ARE INVOLVED IN THE FUNDING OF THE PROGRAM. THE BUDGETED FUNDS FOR

FISCAL YEAR 1986 TOTAL $13 MILLION FOR THE OPERATION OF THE NEW JERSEY TEMPORARY DISABILITY PROGRAM. THIS APPROPRIATION INCLUDES $2.05 MILLION FOR THE RESPONSIBILITIES OF THE PRIVATE PLANS BUREAU AND $10.95 MILLION FOR STATE PLAN OPERATIONS.

THERE ARE SOME SERVICES USED JOINTLY BY THE UNEMPLOYMENT INSURANCE AND DISABILITY INSURANCE PROGRAMS, THE COSTS OF WHICH ARE SHARED BETWEEN THE TWO PROGRAMS. A PLAN OF ALLOCATION HAS BEEN ESTABLISHED BETWEEN UNEMPLOYMENT INSURANCE AND THE DISABILITY INSURANCE SERVICE FOR JOINT TAX COLLECTION EFFORTS. THE DISABILITY INSURANCE SERVICE BUDGET INCLUDES AN APPROPRIATION FOR THESE CHARGES UNDER THIS APPROVED PLAN OF ALLOCATION.

THE AVERAGE COST PER STATE PLAN DISABILITY CLAIM PROCESSED FOR FISCAL YEAR 1986 IS BUDGETED AT $74.48. IT IS DIFFICULT TO COMPARE THIS COST WITH PRIVATE DISABILITY INSURANCE OPERATIONS AS THEIR FUNCTIONS AND RESPONSIBILITIES VARY WITH THE TYPE OF PLAN THAT IS SELECTED BY THE COMPANY.

PRIOR TO 1979 PREGNANCY BENEFITS WERE LIMITED TO AN EIGHT WEEK PERIOD - THE FOUR WEEKS PRIOR TO THE DATE OF BIRTH AND THE FOUR WEEKS IMMEDIATELY FOLLOWING. THIS LAW HAD BEEN IN EFFECT SINCE 1961 WHEN THE LEGISLATURE HAD FIRST PERMITTED THE PAYMENT OF DISABILITY BENEFITS FOR PREGNANCY RELATED DISABILITIES.

WITH THE ENACTMENT OF THE PREGNANCY DISCRIMINATION ACT OF 1979, THE NEW JERSEY ATTORNEY GENERAL ISSUED AN OPINION WHICH HELD THAT THE EIGHT WEEK STATUTORY LIMIT FOR PREGNANCY BENEFITS WAS

NO LONGER VALID. AMENDATORY LEGISLATION WAS SUBSEQUENTLY ENACTED IN 1980 WHICH ELIMINATED THE EIGHT WEEK CONCEPT FROM THE LAW. PREGNANCY BENEFITS ARE PAYABLE UNDER THE SAME TERMS AND CONDITIONS AS FOR ANY OTHER DISABILITY. AN INDIVIDUAL MUST BE UNDER A PHYSICIAN'S CARE AND THAT PERSON'S INABILITY TO PERFORM THE DUTIES OF THE JOB MUST BE SHOWN.

A RECENT ANALYSIS INDICATES THAT APPROXIMATELY 17% OF ALL TDB CLAIMS FILED ARE PREGNANCY RELATED. APPROXIMATELY 22,000 PREGNANCY CLAIMS WERE PAID IN CALENDAR YEAR 1985. WE ESTIMATE THAT THE AVERAGE DURATION OF BENEFITS FOR PREGNANCY RELATED CLAIMS WAS 10.5 WEEKS AND THE AVERAGE WEEKLY BENEFIT RATE WAS $151. THIS COMPARES TO AN AVERAGE DURATION FOR NON-PREGNANCY DISABILITIES OF 8.5 WEEKS WITH AN AVERAGE WEEKLY BENEFIT RATE OF $158.

SINCE ITS INCEPTION IN 1948, THE TEMPORARY DISABILITY BENEFITS PROGRAM IN NEW JERSEY HAS SUCCESSFULLY MET ITS OBJECTIVE OF PROVIDING PROTECTION AGAINST LOSS OF EARNINGS TO THOUSANDS OF DISABLED WORKERS. THE PROGRAM HAS PROVEN TO BE AN EXTREMELY IMPORTANT SUPPLEMENT TO THE UNEMPLOYMENT COMPENSATION LAW. WE ARE PROUD OF THE FACT THAT NEW JERSEY IS ABLE TO OFFER DUAL PROTECTION AGAINST THE VAGARIES OF UNEMPLOYMENT AND DISABILITY TO ITS CITIZENS.

WASHINGTON COUNCIL OF LAWYERS

April 24, 1986

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BY MESSENGER

The Honorable William L. Clay
Chairman
Subcommittee on Labor-Management
  Relations
Committee on Education and Labor
U.S. House of Representatives
2451 Rayburn House Office Building
Washington, DC 20515

Re: H.R. 4300, The Parental and Medical Leave Act of 1986

Dear Chairman Clay:

The Washington Council of Lawyers strongly supports the Parental and Medical Leave Act of 1986 (H.R. 4300) and urges its endorsement by your Subcommittee and the Committee on Education and Labor, as well as its swift adoption by the House of Representatives.

The Washington Council of Lawyers is a voluntary, bipartisan bar association that has sought, since its inception in 1971, to promote the practice of law in the public interest and to promote public service activities in the Washington, D.C. area. The Council's membership includes several hundred lawyers from public and private practice, the government, legal services and civil rights organizations. One of the Council's particular interests is to encourage the protection and enforcement of civil rights, employment and antidiscrimination legislation significantly affecting citizens of the District of Columbia and the Nation.

H.R. 4300 reflects a real need to assist employees who have urgent family responsibilities (or personal medical crises). Such employees should not be forced to choose between the welfare of their child (or their own physical well-being), and their job security. Yet, as Congressional testimony last October made poignantly clear, workers are confronted with such agonizing situations every day.

Remedial legislation such as H.R. 4300 is long overdue. The United States, alone among industrialized nations, lacks a comprehensive national leave policy for childcare. Most other countries also protect their workers against total income loss

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in the event that illness renders them unable to work. By contrast, in the United States, employees are at the mercy of a hodgepodge of state laws and individual employer policy--or whim--regarding income replacement or job security in the event of a temporary disability. Parental leave for fathers or adoptive parents is rare. Even among federal employees, parental leave policy is haphazard, inconsistently applied and formalized by neither statute nor regulation. Where child-care leave policies do exist, men, both in the public and private sectors, receive notoriously discriminatory treatment in their requests for such leave. Although the Pregnancy Discrimination Act of 1978 eliminated some of the most blatant sex discrimination against female workers by prohibiting larger employers from treating pregnancy or pregnancy-related conditions differently than they treat other temporary disabilities, nothing in that Act, or in existing federal law, compels such employers to grant disability leave, or paternal leave, in the first place.

In plugging this loophole, H.R. 4300 will broaden protection for all workers: virtually all employees with pregnancy or childbirth-related medical conditions will be afforded job security, as well as the employee whose serious health condition temporarily prevents his or her ability to work. Now, too, for the first time, childcare responsibilities of both natural and adoptive mothers and fathers will be legislatively protected. Significantly, by providing male workers with the opportunity for parental leave, H.R. 4300 will help eliminate the stereotype--no longer valid in today's working world--that women are exclusively responsible for childcare. By refusing to tie the concept of "pregnancy" to "childcare," this Bill also eliminates the discriminatory problems caused by state "maternity leave" laws such as those currently being contested in California and Montana.

In sum, the Washington Council of Lawyers believes that H.R. 4300 will provide essential protection for today's working families in a sensible and cost effective manner. We note that the Bill protects employer interests in allowing a certification requirement in the event of leave relating to a serious health condition (§ 105), and that in the event of a reduced leave schedule, such leave shall be scheduled so as not to "disrupt unduly" the employer's operations. (§ 103(a)(2)(B)). In recognizing the very real responsibilities of working parents, H.R. 4300 will result in considerable benefit to employer and employee alike by improving worker morale, stability and effectiveness.

The Washington Council of Lawyers appreciates the opportunity to comment upon, and lend its support to, this significant legislation. We respectfully request that these comments be included in the official hearing record.

Very truly yours,

Richard Jacobson (by [illegible])

Richard L. Jacobson
President

cc: The Honorable Patricia Schroeder
The Honorable Mary Rose Oakar
The Honorable Austin J. Murphy

THE WOMEN'S BAR ASSOCIATION
OF
THE DISTRICT OF COLUMBIA
1750 PENNSYLVANIA AVENUE, N.W., SUITE 1303
WASHINGTON, D.C. 20006

(202) 347-1001

MAY 9 1986

May 6, 1986

Honorable William L. Clay
Chairman, Subcommittee on
Labor Management Relations
2451 Rayburn HOB
Washington, DC 20515

Dear Representative Clay:

The Women's Bar Association of the District of Columbia strongly supports the passage of the Parental and Medical Leave Act (H.R. 4300) introduced by 30 of your colleagues. We believe that this legislation warrants your active and unwavering support. This bill is extremely important to the well-being of the family and to the development of our most important resource for the future -- our children.

We are an organization of professional women concerned with maintaining the quality of family life while recognizing the increasing prevalence of two-career families. Legislation assuring the right of either parent, upon the birth, adoption or serious illness of a child, to take a limited leave without fear of job loss or other penalty is long overdue.

Clearly it is time for this country to provide such minimal but vital support for the health and continuity of family life. Such support is already provided in nearly every other industrialized nation in the world. Moreover, providing for this kind of limited leave should create no serious adverse consequences for employers. In fact, it is more likely to benefit employers by promoting employee loyalty, job satisfaction and productivity.

This organization is very concerned that this bill receive prompt and favorable consideration. We would appreciate hearing your position regarding this important piece of ground-breaking legislation.

Finally, the Women's Bar Association of the District of Columbia requests that this letter of support be made a part of the hearing record and that the Women's Bar Association of the District of Columbia be added to the official list of supporters of the Parental and Medical Leave Act.

Sincerely yours,

WOMEN'S BAR ASSOCIATION OF
THE DISTRICT OF COLUMBIA

By: Bettina Lawton
Bettina Lawton,
President, 1986-1987

catalyst

May 14, 1986

Mr. Fred Feinstein
Subcommittee on Labor Management Relations
2451 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Feinstein:

As a national information resource, Catalyst helps companies develop the career and leadership capabilities of women. We accomplish this by identifying and analyzing career and family issues and offering solutions to corporate policy makers.

In 1984, Catalyst conducted a national study of parental leave policies, practices, and attitudes among 1500 of the nation's largest corporations. We chose to study large companies because we believe that the policies they adopt will eventually filter down to smaller companies. This study consisted of a detailed written questionnaire, discussions with managers and non-managers on their leave-taking experiences, and interviews with human resources directors. The Catalyst study is the only one of its kind in that, in addition to examining policy, it addresses corporate attitudes and practices.

As an organization that works to develop options, Catalyst recognizes that every company is different and that flexibility is key in developing policy. For this reason, Catalyst has developed The Corporate Guide to Parental Leaves, a handbook designed to assist companies in planning and implementing policy. The Guide lists and explains all possible policy elements and how they can be combined to meet the employees' needs for flexibility and the employer's cost and productivity requirements.

Catalyst's work in this area has been directed to corporations and not to legislative action, but to the extent that this information can be helpful to the committee's work, we submit our Report on a National Study of Parental Leaves as testimony for the record regarding HR 4300, the Parental and Medical Leave Act.

Please feel free to call me if I can be of any assistance to you.

Sincerely,

Margaret Meiers

Margaret Meiers
Associate
Career & Family Programs

MM/pn

250 Park Avenue South
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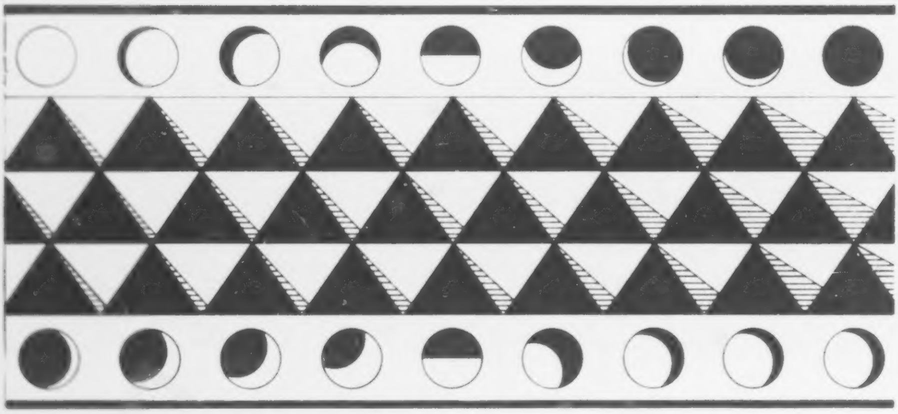
(212) 777-8900

catalyst



Report on a National Study of Parental Leaves

By the staff of Catalyst

This study and report were funded by the Revlon Foundation, Inc

REPORT ON A NATIONAL STUDY OF PARENTAL LEAVES

By the staff of Catalyst

Catalyst works with corporations to develop the leadership capabilities of women. We assist policy planners in evolving options to help employees successfully combine career and family. A responsive parental leave policy and a supportive working environment can increase productivity while allowing women to freely choose and attain individual career goals.

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Grateful thanks to the 384 corporate respondents who took the time to fill out a 10-page questionnaire, the 112 women throughout the country who thought the subject important enough to participate in lengthy focus-group discussions and the corporate managers who allowed us to include their comments, case examples and policy excerpts.

And finally, this project would not have been possible without generous funding from the Revlon Foundation and without major support from the W.K. Kellogg Foundation for Catalyst's career and family programs.

THE CORPORATE GUIDE TO PARENTAL LEAVES

Based on the findings and recommendations presented in this report, Catalyst has developed The Corporate Guide to Parental Leaves, which consolidates all the information needed to design, modify and evaluate parental leave policies so that they produce maximum benefits for individual employers and employees. To assist companies at all stages of policy development, the guide includes:

- An index of all possible policy components.
- Guidelines for combining components based on an individual employer's objectives.
- Comprehensive information on writing and communicating policy.
- A complete overview of current federal and state legislation affecting parental leave policies.
- Detailed options for handling the work of leave-takers.
- Strategies for making the transition back to work most productive.
- Suggestions for developing policies for fathers and adoptive parents.

Supplementing the text are numerous examples of actual corporate policies to aid policy planners in determining how to formulate and present policy and in learning how other companies handle parental leaves. To provide insight into employees' experiences, the guide also includes quotes and case examples drawn from Catalyst's nationwide focus groups.

Report on a National Study of Parental Leaves

CONTENTS

Preface 11
Background 13
Methodology 16

I. Corporate Policy 23
1. Components of a Leave Policy 23
2. What Kinds of Leaves Do Companies Offer? 26
3. What Kinds of Leaves Do Companies Offer to Fathers? 37
4. Policy Variations Based on Company Differences 39

II. Policy into Practice 43
1. Communication of Policy 43
2. How Work Is Handled During Leaves 48
3. The Transition Back To Work 53

III. Corporate Attitudes and Evolving Policy 57
1. What Determines a Leave's Success 57
2. What Companies Consider a Reasonable Leave Length 62
3. Future Policy Directions 69
4. Work and Family Initiatives 77

IV. Catalyst's Policy Recommendations 83

CHARTS AND GRAPHS

Geographic Location of Survey Respondents 18
Payment Offered During Disability Leave 27
Average Length of Disability Leave Taken by Women as Reported by Companies 29
Conditions of Reinstatement After Disability Leave 30
Length of Unpaid Leave Offered to Women 31
Average Total Leave Taken by Women 32
Comparison of Benefits Offered During Disability and Unpaid Leaves 33
Why Policies Have Changed 35
Ways in Which Policies Have Changed, 1979-1983 37
Comparison of Average Lengths of Unpaid Leaves Offered to Women and Men 38
Policies Offered by Region 40
Policies Offered by Industry Group 41
Policies Offered by Level of Annual Sales 41
Components of Policy Explained in Employee Handbooks or Brochures 44
How Work is Handled for Managerial and Non-Managerial Leave-Takers 49
Companies Allowing Some Employees to Return Part Time for a Limited Period 54
Amount of Unpaid Leave Time Respondents Considered Reasonable for Women, Regardless of Official Policy 63
Comparison of Policy and Attitude for Companies with an Unpaid Leave Policy for Women 64
Amount of Unpaid Leave Time Respondents Considered Reasonable for Men, Regardless of Official Policy 65
Comparison of Policy and Attitude for Companies with an Unpaid Leave Policy for Men 66
Amount of Leave Time Considered Reasonable for Women by Region 67
Amount of Leave Time Considered Reasonable for Women by Size of Work Force 68
Amount of Leave Time Considered Reasonable for Men by Level of Annual Sales 68
Comparison of Future Policy Directions and Current Policy Options 69
Preferred Policy Options by Industry Group 71
Preferred Policy Options by Level of Annual Sales 72
Preferred Policy Options by Size of Work Force 73
Preferred Policy Options by Region 73

Preferred Policy Options by Gender of Respondent 74
Work and Family Initiatives: Practices and Attitudes 78
Comparison of Work and Family Initiatives by Industry Group 79
Comparison of Work and Family Initiatives by Level of Annual Sales 80
Comparison of Work and Family Initiatives by Region 81
Comparison of Work and Family Initiatives by Gender of Respondent 82

PREFACE

This report details the research findings of Catalyst's National Study of Parental Leaves. Each section reports on the results of a written survey instrument sent to corporations, on focus group discussions with managerial and non-managerial leave-takers across the country and on insights obtained from interviews with human resources policy planners. The survey data is used throughout the report as a base of information supplemented by material from interviews and focus groups that corroborates, contrasts with or amplifies survey findings.

BACKGROUND

In January of 1984, Catalyst's Career and Family Center launched a national study of corporate parental leave policies. The study, which was funded by the Revlon Foundation, had four primary objectives:

1. **To collect data** that would provide a picture of current leave policies, practices and attitudes at some of the nation's largest companies

2. **To discover how policy translated into practice** by gathering information about the experiences and attitudes of individual leave-takers .

3. **To provide a source of information for policy planners** to use in evaluating, developing and implementing policies

4. **To investigate and address barriers to changes in corporate policy**

The Catalyst project was originally called "A National Study of Maternity/Parental Leaves." This title was selected for the benefit of human resources planners who might not immediately recognize the term "parental leave" if it were used alone. Researchers soon found, however, that in addition to being cumbersome, the title was confusing and raised some question of equity. Consequently the study's name was changed to "A National Study of Parental Leaves."

THE NEED FOR ADDITIONAL RESEARCH ON PARENTAL LEAVES

Much of the impetus for the current project on leaves came from an earlier Catalyst study, Corporations and Two-Career Families: Directions for the Future (1981). Although the findings on parental leaves in the 1981 report were limited, they prompted a flood of inquiries from companies who were receiving unprecedented numbers of requests for parental leaves and were also finding that, as one harried policy planner described it, "each of the pregnant women had a different plan in mind."

Companies were anxious to obtain information that could help them in two areas: developing parental leave policies and finding out how their policies compared with those of other corporations.

Concurrently, women were contacting Catalyst for information about their leave entitlements and to find out which companies offered the most generous leaves. The high volume of inquiries from both employers and employees indicated a need for additional in-depth research on the subject. Previous studies on parental leaves focused on basic components of policy, i.e., eligibility, job protection, length of leave and compensation during the leave. The Catalyst study adds substantially to this data by providing more detailed information and by comparing policies to practices and attitudes as well as to leave-takers' experiences.

In 1980-81, researchers at Columbia University examined those aspects of parental leave most relevant to public policy decision making, such as salary replacement during leave, job protection and health and medical insurance coverage during leaves.[1] Unlike Catalyst's survey, which focused on the nation's largest corporations (by level of annual sales), the Columbia study looked at companies of varying sizes (although all had annual sales in excess of $500,000). Generally speaking, respondents to the Catalyst survey were much more likely to offer disability leaves and longer leaves, and much less likely to impose length-of-service requirements on leave benefits than respondents to the Columbia study. This finding confirms the conclusion of both studies that larger companies tend to be more generous concerning benefits than smaller ones.

It should be noted that the policies of large corporations do not represent what is likely to be normative for parental leaves in the United States. The Columbia study found, for example, that only about half of all responding companies provided short-term disability coverage. This proportion contrasts sharply with the 95% of Catalyst respondents offering disability benefits.

In 1983, the Bureau of National Affairs (B.N.A.) included parental leaves in a larger survey of Policies on Leave from Work.[2] The B.N.A. study compared the basic features of parental leave policies offered by a respondent population that included organizations in both the private and public sectors. Most of the 253 respondents had fewer than 1,000 employees; in contrast, only 17.2% of the companies in Catalyst's sample had fewer than 1,000 employees. Although the findings of the B.N.A. study regarding length of leave and type of job guarantee were corroborated by the Catalyst study, these comparisons should not be considered conclusive because the B.N.A. study did not distinguish between disability and unpaid leave. Organizations participating in the B.N.A. study appeared to have slightly more stringent length-of-service requirements.

1. Sheila B. Kamerman, Alfred J.Kahn, and Paul Kingston, Maternity Policies and Working Women (New York: Columbia University Press, 1983).

2. The Bureau of National Affairs, Policies on Leave from Work, Personnel Policies Forum Survey, No. 136, (Washington, D.C.: Bureau of National Affairs, 1983).

METHODOLOGY

To obtain a comprehensive picture of current parental leave policies, Catalyst's survey included four separate components:

1. A survey of the nation's top corporations
2. Group interviews with employees to explore their responses to, and experiences with, company policy
3. Interviews with human resources personnel
4. A review of the literature on the subject

THE SURVEY

The Parental Leave Survey questionnaire was an extensive, ten-page instrument designed to explore all aspects of company policy. It consisted primarily of multiple choice questions, with a few open-ended questions allowing respondents to comment more fully. The survey was divided into four parts.

1. **Policy**--identified elements included in formal or informal policies, such as disability, unpaid leave, eligibility requirements, compensation, benefits, job guarantees, length of leaves and recent corporate policy changes.

2. **Practice**--addressed how policy is communicated to employees; what exceptions to policy are made; how work of leave-taking employees is handled; how policies treat reinstatement; how many employees take leaves and for how long; and which other family supports companies offer.

3. **Attitude**--explored the length of leaves companies consider reasonable; the factors that contribute to a successful leave; which policy options companies

would consider in the future; and the major concerns of companies in considering options.

4. **Company Profile**--described industry type, geographic location of respondents, level of annual sales and size of work force.

Distribution of Survey

In January of 1984 the survey was mailed to 1,462 of the nation's 1,500 largest companies (by level of annual sales). The survey was personally addressed to either the Director of Human Resources (or an equivalent, e.g. the Director of Personnel or Administration) or, where that name was unavailable, the Chief Executive Officer or President. The questionnaire was accompanied by two brochures describing Catalyst, a letter explaining the project and a postage-paid return envelope. Companies were promised confidentiality and a copy of the report. One month after the first mailing, a second mailing that included a brief reminder letter and another copy of the survey was sent to all non-respondents.

As the March 1 deadline for returning the questionnaire approached, Catalyst received a number of phone calls from human resources executives saying that they were in the process of completing the survey and requesting to return it by express mail on the due date. One company official wrote, "We are in the process of re-examining our policy --your research will help guide us." A few who chose not to participate were not aware of the importance of the issue and stated as much. A total of 384 companies returned their completed forms, for a participation rate of 26.3%. Fourteen surveys received after the deadline could not be included in reporting the quantitative data.

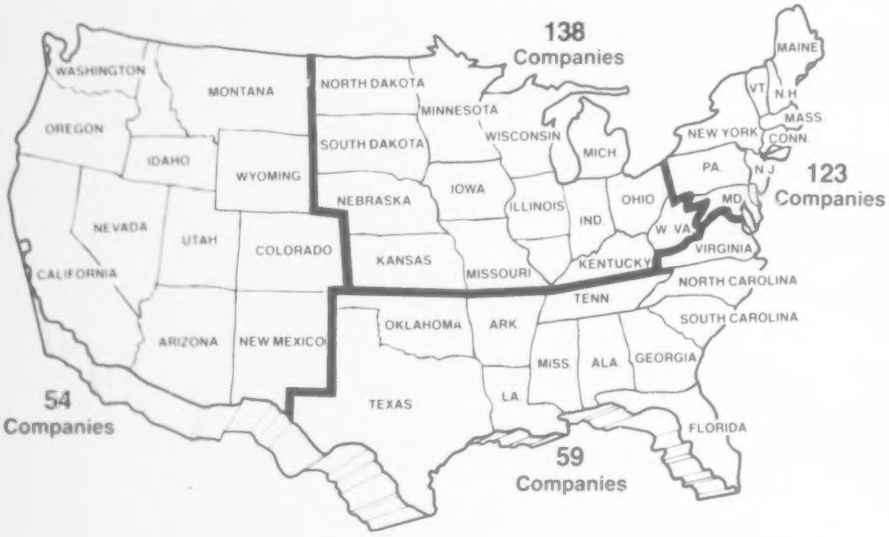
Overview of Respondents

Participant companies presented a variety of profiles, based on industry group, location, level of annual sales and size of work force.

Groupings from the standard industry classification index of Standard and Poor's Register of Corporations, Directors and Executives were used to determine industry type. Over half of the participating companies (59.4% or 222 companies) were engaged in manufacturing, construction, mining or agriculture. This number also included consumer products manufacturers, high technology companies and lumber companies, among others. One quarter of respondents (28.3% or 106 companies) were in the financial or service industries, including commercial and investment banking, real estate and retail trade. The remaining 12.3% (46 companies) were from the communications, transportation and public utilities industries, including television networks, airlines and moving companies. Industry data on ten companies was unavailable.

Three hundred seventy-four participants identified themselves by state. About one-third (32.9% or 123 companies) were located in the Northeast, which included the six New England states and the five Mid-Atlantic states. Another 36.9% or 138 companies were

GEOGRAPHIC LOCATION OF SURVEY RESPONDENTS


138
Companies
123
Companies
54
Companies
59
Companies
WASHINGTON
OREGON
CALIFORNIA
IDAHO
NEVADA
MONTANA
WYOMING
UTAH
COLORADO
ARIZONA
NEW MEXICO
NORTH DAKOTA
SOUTH DAKOTA
NEBRASKA
KANSAS
OKLAHOMA
TEXAS
MINNESOTA
IOWA
MISSOURI
ARK.
LA.
WISCONSIN
ILLINOIS
MICH.
IND.
OHIO
KENTUCKY
TENN.
MISS.
ALA.
GEORGIA
FLORIDA
SOUTH CAROLINA
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headquartered in the 14 states of the North Central region and the Midwest. The remaining 30.2% were split evenly between the West (54 companies) and the South (59 companies).

All respondents recorded a high level of annual sales, which was predictable given the group surveyed. Nevertheless, some variation occured among companies in volume of sales. In reporting on differences in responses, we divided companies into three groups according to annual sales. The smaller companies (30.9% or 104 companies) reported sales of $500 million or less. Another 30.9% (104 companies) were of medium size, with sales between $501 million and $2 billion. The remaining 38.3%, the 129 larger companies, reported sales in excess of $2 billion (N=337).

Categorizing the respondent pool by size of work force, most companies were found to be large employers. Only 17.2% (65 companies) had fewer than 1,000 employees. For the purposes of this report, companies categorized as smaller (35.1% or 133 companies) are those with fewer than 2,500 employees. Medium-sized companies (31.7% or 120 companies) have between 2,500 and 9,500 employees, and large companies (33.2% or 126 companies), more than 9,500 employees (N=379).

A breakdown by gender showed that slightly more men than women filled out the questionnaire. Of those corporate human resources executives responding, 173 were men and 160 were women. Fifty-one respondents chose not to identify themselves.

Analysis of Data

In reporting the findings, percentages were calculated on the basis of the number of companies answering each particular question. Each of the percentages is based on a different N, or sample size, since the number of companies that answered each question varied. Blanks, data unavailable or "not applicables" were never included in the N for a specific question. To avoid misinterpretation of the data we include the N for each question discussed in the text. The numbers have been rounded off to the nearest tenth of a percent so in some cases they do not add up exactly to 100%.

When looking at differences among companies by industry group, region, level of annual sales and size of work force, the N for individual questions is often quite small. Therefore, these comparisons should not be considered conclusive.

EMPLOYEE FOCUS GROUPS

In order to better understand how corporate policy is experienced by leave-takers, Catalyst organized a series of discussion groups with employees who had taken parental leaves within the past five years. One hundred and twelve women participated in 16 groups, which were held in eight cities (San Francisco, Los Angeles, Pittsburgh, Minneapolis, St. Louis, Chicago, Atlanta and New York) with additional telephone interviews conducted in Dallas. Separate discussion groups were held with management and with non-management employees; one additional group was held with six new-fathers. Catalyst chose not to conduct additional discussions with men because fathers were not the main focus of the study, and time and resources were limited. The discussion guide developed for the focus groups explored women's attitudes toward their leaves--what worked well for them, what did not and what they would have preferred. Among the topics covered: supervisory response to the announcement of a pregnancy, arranging for a leave, determinants of the length of leave, provisions for managing the workload, the most desirable type of leave, child care arrangements, returning to work and changes in the new parent's perspective and career path.

In talking with focus group participants we hoped to discover how company policies and perceptions conformed to employee experiences. We also wanted to learn about employee concerns that might be unknown or unaddressed by companies. From both the human resources personnel interviews and the focus group discussions, we obtained information about how companies and individuals are coping with leave-taking. We learned of successful strategies that employers and employees are using and uncovered a number of problems that remain to be addressed.

HUMAN RESOURCES PERSONNEL INTERVIEWS

In the second phase of the study, interviews were conducted with 51 company representatives. Initially, 21 senior human resources executives who had responded to the written survey were interviewed. The objectives were to explore the philosophy behind current policies and to discuss the changes companies might be planning for the future. A uniform interview discussion guide was used to find out what policy consisted of, what alternative work schedules were being implemented, how policy trends developed and evolved, attitudes toward men taking leaves, how work is handled during leaves and what other work and family initiatives were offered.

Another 30 human resources executives were interviewed at companies that reported having innovative work and family policies.

LITERATURE REVIEW

Still further research was conducted regarding the legal aspects of parental leave. Literature on pregnancy discrimination was scanned and several interviews were conducted with attorneys to determine the ramifications of legislation and judicial decisions.

PART I: CORPORATE POLICY

As one of its primary goals, Catalyst's study sought information about the formally articulated parental leave policies of corporate America. Questions on written policy were posed in the survey, in interviews with human resources executives and in focus group discussions. The purpose was to learn the current official corporate posture on leaves. This must be distinguished, however, from current practice, which the study investigated separately.

COMPONENTS OF A LEAVE POLICY

A written parental leave policy can consist of many different components. The following are definitions of the aspects of policy relevant to our study. These components may be combined in a variety of ways, allowing companies to tailor policies to suit their needs.

Adoption Benefits

Adoption leaves, generally unpaid, can be granted to employee parents to enable them to spend time with an adopted child. A company can also help defray the costs of adoption by reimbursing employees for all or part of their adoption expenses. Adoption benefits need not pertain to infants only but can be extended to adopted children of any age.

Anticipated Disability Leave

Some companies grant leaves to employees who need to prepare for a foreseeable medical disability. Pregnancy is sometimes included in this category. An anticipated leave precedes the disability period and is generally unpaid. Because 0-2 weeks prior to delivery is certifiable as medical disability, an anticipated disability leave could cover the period from 2-4 weeks before delivery.

Benefits

The status of an employee's benefits during the leave depends on the type and length of leave taken. While benefits are usually paid during disability, employees are sometimes required to pay a greater share, or even the full cost, of their medical benefits during an unpaid leave. Benefits that depend on an employee's length of service, such as retirement or profit-sharing plans, may also be affected by the length of leave.

Disability Leave

Disability leave, as it relates to pregnancy, is a leave given to new mothers for the length of time they are medically disabled by pregnancy. A woman may be certified as medically disabled from 0-2 weeks prior to her delivery date and for 6-8 weeks afterward. Such a leave may be fully or partially paid, or unpaid, depending on the company's short-term disability policy.

Eligibility Requirements

Eligibility requirements include any restrictions or qualifications a company uses to determine who can take leaves and under what conditions. These requirements need not be consistent for every aspect of policy. A company may offer disability leaves to all employees, for example, but limit unpaid leaves to individuals who have been employed for at least 10 months.

Length of Leave

In deciding its unpaid leave policy, a company should consider the total amount of time it wishes to make available to new parents. The length of a disability leave is determined by the individual woman's medical condition but, for a normal birth, the time is generally assumed to be six to eight weeks. An unpaid leave can range in length from one month to one year, depending on company policy. If a company chooses to offer a four-month total leave, for example, it may assume that, for new mothers, two-months will be covered by disability and an additional two months will consist of unpaid leave. New fathers and adoptive mothers would not be entitled to disability but could take the entire four months as unpaid leave.

Limited Part-Time Return

A limited part-time return schedule provides for an interim period that may assist employees in making the transition back to full-time work. Employees using this option may work half their usual hours or any fractional time over the course of a three- to five-day work week. A limited part-time schedule can remain in effect anywhere from several weeks to several months.

Post-Disability Leave

Post-disability leave allows a disabled employee to take time off after the physical recovery from an illness or injury. Almost always unpaid and comparable in length to other unpaid leaves of absence, a post-disability leave can be offered only to employees who have a medical condition qualifying them for disability leave. Such leaves are thus restricted to natural mothers and, in contrast to unpaid leaves, are not legally required for equity's sake to be made available to adoptive parents or natural fathers.

Reinstatement

The reinstatement portion of a leave policy delineates the terms under which an employee will return to work after her leave and, specifically, the job to which she will return. Its provisions can vary depending on the type or length of leave taken.

Seniority

In some companies, an employee does not earn length-of-service credits during a leave of absence. If this is the case, the worker may lose some seniority and whatever benefits accrued to it (e.g. priority for scheduling shifts, review date for annual raise or promotion).

Subsequent Time Off

The length of leave taken could affect the number of an employee's vacation, personal and sick days, or when she can take them. A company may choose to require that an employee use up all her paid time off before taking any unpaid leave of absence for child care reasons. These conditions should be clearly stated in the written policy.

Unpaid Leave

An unpaid leave may be offered to the new mother to enable her to care for and develop a relationship with the baby. This type of leave may also be offered to new fathers and to adopting parents.

WHAT KINDS OF LEAVES DO COMPANIES OFFER?

The first part of the survey explored what companies offered in their written policies, and under what conditions various options were offered. Most respondents granted employees a fully or partially paid disability leave with some type of job guarantee. About half included an unpaid leave for women with a job guarantee as part of their written policy. A growing number of companies are also beginning to offer unpaid leaves with job guarantees to natural fathers and adoptive parents. When they are included in formal policy, these parental leave benefits for maternity, paternity and adoption are usually available to employees at all job levels and with only a minimum length of service. Some variation was observed in the kinds of benefits offered by industry group, region and level of annual sales.

Catalyst also found that leave policies are still evolving. A substantial number of companies said that they had changed their policies in the past five years, primarily in response to the passage of the Pregnancy Discrimination Act (1978). Responses to other survey questions indicated that companies would consider making policy changes in the future.

DISABILITY LEAVES

Most respondents offer disability leave.

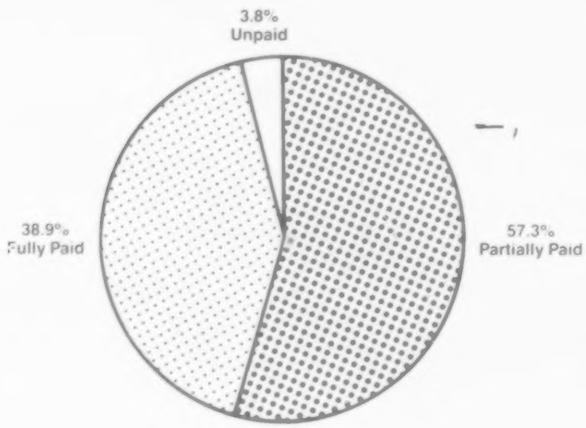
Fully 95% of survey respondents grant short-term disability leaves to employees. The source of disability insurance coverage is usually private (61.7% of companies). A quarter of companies (23.2%), though, have a combination of state and private coverage and the remaining 10.2% offer state-mandated disability insurance (N=324).

Most disability leaves are paid.

All but a few companies provide some compensation during disability dependent on length of service, job rank or a combination of the two. Over half of respondents state that the leave period is partially paid and over a third that it is fully paid.

PAYMENT OFFERED DURING DISABILITY LEAVE

(N 314)



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A majority of companies (62.7%) linked compensation during disability to an employee's length of service; 37.3% did not (N=306). Job rank determined compensation at a quarter of the companies (26.8%) but was not a factor at most (73.2%) companies (N=254).

Eligibility for disability benefits usually begins when an employee starts his or her job. Half of responding companies (49.2%) had no minimum service requirement. Another fifth (20.3%) required only three months of service, and 16.2% stipulated employment of six months to two years. The remaining 14.3% had other length of service requirements, including variations within companies by union bargaining agreement and by division (N=321).

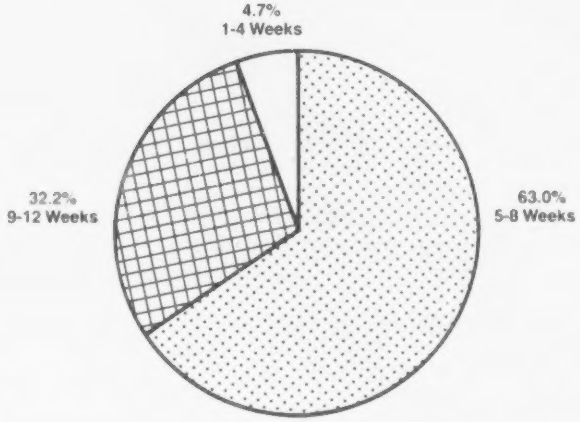
Compensation during parental leaves includes not only salary but continuation of benefits. Almost all corporate respondents (90.2%) continued full benefits during disability. A few companies, however, stipulated that benefits would continue only if the employee paid most (2.8%) or all (5.2%) of the cost. A handful said that benefits were reduced (1.2%) or curtailed (0.6%) during disability.

Disability leaves are usually five to eight weeks long.

Length of disability leave is determined by an employee's medical condition. Her physical status is usually assessed by her physician, although occasionally companies will require employees to be examined and have the length of leave determined by a company-appointed physician. Most physicians consider a normal or average pregnancy disability to be two weeks prior to and six weeks following delivery. A cesarean section may warrant an additional two weeks or more after delivery.

AVERAGE LENGTH OF DISABILITY LEAVE TAKEN BY WOMEN AS REPORTED BY COMPANIES

(N = 320)



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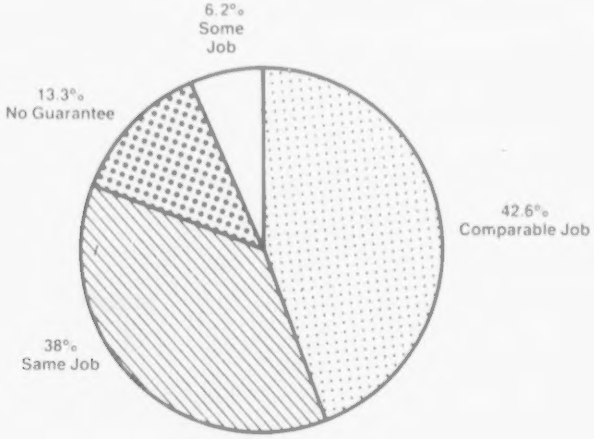
Disability leave benefits often include job reinstatement.

The existence of some type of job guarantee is critical to employees taking parental leaves. Without promise of reinstatement, taking a leave is tantamount to quitting. By and large, responding companies did offer some type of job guarantee during disability; in slightly more cases it was a comparable job rather than the same job. To employees, the difference between a comparable job and the same job can be significant. If an employee is on a focused career track, she may lose out by having to return to a different job and essentially work her way back up to the level at which she left.

CONDITIONS OF REINSTATEMENT AFTER DISABILITY LEAVE

(N 324)



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UNPAID LEAVES

Half of responding companies offer an unpaid leave other than disability to women.

Unpaid leave for women, which was offered by 51.8% of responding companies (N=328), is the second most common element of a parental leave policy. For women, unpaid leave is usually taken after the disability period and, for men, after the birth of the child. This leave is frequently used by new parents to spend time with the baby and to line up child care. Although some companies might offer a leave during which benefits are continued but job guarantees are omitted, Catalyst included in its data only those companies offering job reinstatement. We assumed--and focus groups confirmed--that the conditions of reinstatement heavily influence the employee's decision on whether or not to take unpaid leave and, if so, for how long.

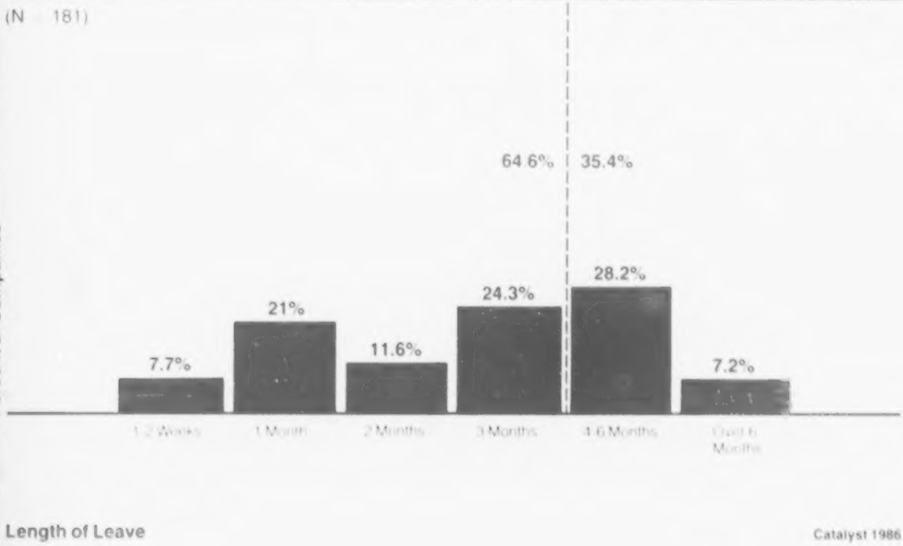
The conditions of reinstatement usually stipulated the length of unpaid leave an employee could take and be reinstated to the same position, a comparable one or some job. At some companies employees could opt either for a shorter leave with a guarantee of the same job, or for a longer one with reinstatement to a comparable position. Of the companies that granted unpaid leaves with job guarantees, a substantial number guaranteed a comparable job (49.7%) and only slightly fewer gave leave-takers the same job (40.4%). A smaller percentage (9.8%) guaranteed some job (N=183).

Unpaid leaves vary considerably in length.

The length of unpaid leave with a job guarantee ranged from one week to a year, but in over half the cases the length was three months or less.

LENGTH OF UNPAID LEAVE OFFERED TO WOMEN

(N = 181)



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Companies were also asked to report the total combined length of leave, including disability and unpaid leave, that employees take. More than three-quarters of companies responding to the question reported three months or less. Fewer than a sixth reported leaves of more than five months.

AVERAGE TOTAL LEAVE TAKEN BY WOMEN

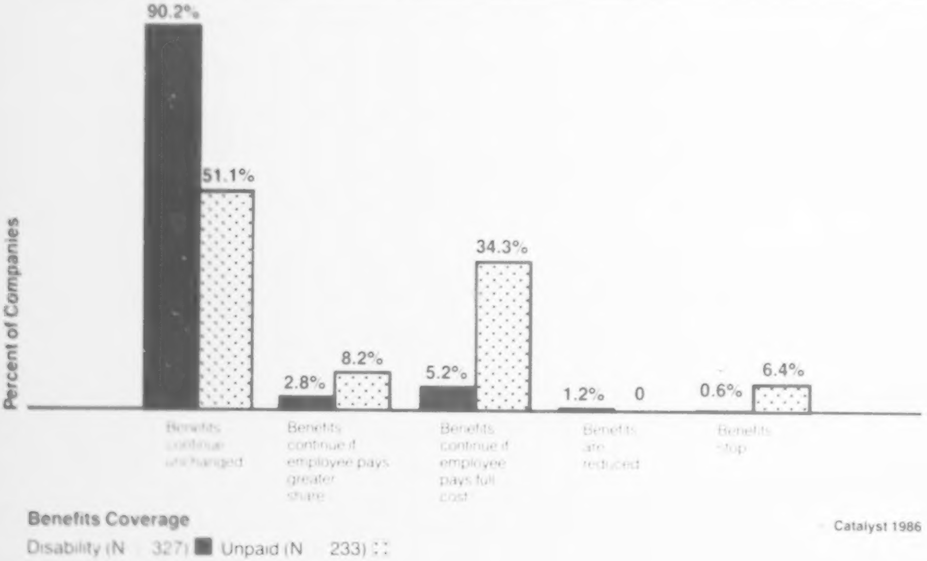
	Managerial Women (N=143)	**Non-Managerial Women** (N=188)
3-8 weeks	45.4%	43.6%
9-12 weeks	32.3%	35.0%
13-20 weeks	14.7%	13.9%
Over 20 weeks	7.7%	7.5%

At first glance, it may seem that women are taking far less leave than they are actually offered. This could be accounted for by the financial considerations of individual employees but, since the companies' reports of total leave taken are roughly the same for both managerial and non-managerial women, economic need is less likely to be the major factor. A more plausible explanation for the discrepancy between the generous unpaid leaves offered and the brief leaves reported may lie in how companies' responses were prepared.

It may well be that the companies with the most limited leave policies (disability and short unpaid leaves only) found it simpler to answer the question. Companies with more extensive policies would have had to compile statistics, a more arduous task, and may therefore not have answered the question.

Employees often take reponsibility for continuing benefits coverage during unpaid leave. Unlike disability policies, many unpaid leave policies require that employees pay all or part of the premiums in order to continue benefits during unpaid leaves. Employees must pay the full premium at a third of the responding companies (34.3%) and part of the premium at 8.2% of companies. About half of the companies continue employees' benefits entitlements unchanged (51.1%). At only 6.4% of companies do benefits stop (N=233).

COMPARISON OF BENEFITS OFFERED DURING DISABILITY AND UNPAID LEAVES



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Many part-time workers receive no parental leave benefits.

In just under half of respondent companies (46.6%), part-time employees receive no parental leave benefits whatsoever. In nearly a quarter of the companies (24.9%), those who were eligible for benefits often did not receive as many as full-time employees did. In only 28.5% of the companies were part-time employees eligible for full parental leave benefits (N=326).

ADOPTION LEAVES

Since 1980 there has been a notable increase in the number of companies offering adoption benefits.

In its 1980 study of Fortune 1,300 companies, Catalyst found that only 10.3% offered adoption benefits. The 1984 survey of a similar population showed a significant increase. More than a quarter of respondents (27.5%) now offer such benefits. Adoption benefits were also reported among the options under consideration by companies planning to alter their parental leave policies. At the present time, 17.5% address adoption in a formal policy and 10% handle it informally (N=331).

While leaves for adoption are generally unpaid, about one-third of companies that have adoption policies (31.8%) reimburse employees for adoption expenses. The amount of reimbursement varied. Two companies set no limit and 12 set a maximum of $1,000. Eight other companies set a range of between $1,200 and $2,000. One of these companies, however, reimbursed employees up to $5,000 for foreign adoptions. Four companies specified that they reimburse medical expenses only (N=85).

As an eligibility requirement, companies sometimes set an age limit for the adopted child. Most companies (61.8%) offering adoption benefits set 18 years as the maximum age of the child for whom benefits would be allowed. A smaller percentage (11.8%) of respondents limited benefits to those adopting "infants" or up-to-one-year-old babies and 5.9% set varying age limits for adoptees under age 18. One-fifth of respondents had set no age limit (N=68).

CHANGES IN PARENTAL LEAVE POLICIES

The Pregnancy Discrimination Act (PDA) of 1978 has had a strong impact on company policies.

Over half of corporate respondents (53%) had modified their parental leave policies in the past five years, and many cited as their reason passage of the PDA, which requires that pregnancy be treated like any other disability (N=330). Other less frequently cited reasons for changes were: to keep pace with other companies in the industry; to respond to increasing numbers of employees in general--or managers in particular--requesting leaves; to attract and recruit new employees.

WHY POLICIES HAVE CHANGED (Multiple responses possible)

Reasons for Changing Parental Leave Policy	**Percentage of Companies** (N=179)
PDA	87.7%
To keep pace with others in the industry	20.1%
Increase in numbers of employees asking for leaves	12.9%
More managerial women asking for leaves	9.5%
To attract and recruit employees	7.3%
Female employees initiated discussions of possible changes	5.0%
Union negotiations	4.5%
Male employees expressed concern	3.9%
Other (these reasons included: to have a uniform policy, policy for all disabilities was changed, and routine revision of all Supervisor's Manual Procedures)	14.0%

Companies cited a variety of ways in which policy has changed.

In order to determine the ways in which policy has evolved, the survey instrument asked respondents to describe how (if at all) policy had changed. Of the companies responding to this open-ended question, 61.8% stated that policy had changed to conform with the Pregnancy Discrimination Act (N=157). In some cases companies described specifically how the PDA had changed their policies; in others they merely cited the PDA as being the impetus for the change.

One frequent policy change after passage of the PDA was in the length of leave offered. As a reflection of the PDA's extension of disability policies to pregnant employees, there was some tendency among companies (34.8%) to show an increased length of paid (disability) leave. Some companies (23.2%) appear to have decreased the length of their unpaid leaves. Follow-up interviews with human resources administrators indicated that some employers who had had flexible, liberal responses to maternity leave requests changed their policies to offer only what was now legally required. Others, however, have made their unpaid leaves longer (13.4%) and most (63.4%) have maintained their former length.

In addition, 38.2% of respondents cited ways in which their policies had changed other than to conform to the PDA (N=157). A few of these modifications may be at least indirectly attributable to the PDA. Some companies reported an increased standardization and clarification of policy. Others cited a more consistent application of existing policy. Since the PDA called attention to the issue of parental leave, it may well have led companies to formalize previously informal or ad hoc policies. Reported changes in parental leave policy apparently unrelated to the PDA include the expansion and addition of benefits, such as allowing employees to use sick days for maternity, making unpaid leaves available to men, offering leaves to adoptive parents and extending benefits during leaves.

WAYS IN WHICH POLICIES HAVE CHANGED, 1979-1983

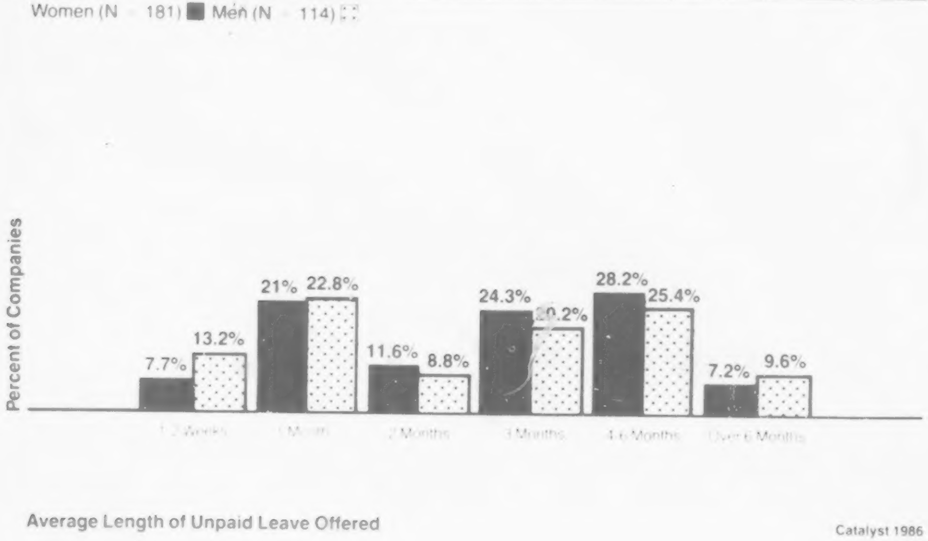
	Increased	Decreased (172 ≤ N ≤ 188)	No Change
Formality of policy	57.4%	3.2%	39.4%
Eligibility restrictions	20.2%	23.7%	56.1%
Length of paid leave	34.8%	9.9%	55.2%
Length of unpaid leave	13.4%	23.2%	63.4%

WHAT KINDS OF LEAVES DO COMPANIES OFFER TO FATHERS?

Companies are offering men parental leaves, but very few are taking them. Over a third of survey respondents (37.0%) reported that they offer an unpaid leave with a job guarantee to men (N=322). This practice is not usually called paternity or parental leave but instead is covered under the company's general personal leave or leave-of-absence policy. Much less frequently, unpaid time off for men was described as leave for care of newborn child, child care leave or dependent care leave.

The unpaid leaves offered to men were similar in length to those offered to women -- generally between one and six months.

COMPARISON OF AVERAGE LENGTHS OF UNPAID LEAVES OFFERED TO WOMEN AND MEN



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Despite the fact that companies are increasingly offering leaves to new fathers, only nine companies reported that men took advantage of the leave policy. Follow-up discussions with human resources policymakers indicate that it is fairly common for fathers to take a few days off at the time of the child's birth, but they rarely request this time as a separate paternity leave. More often, men use their vacation days or arrange to take the time off informally as paid or unpaid personal days. There may be several explanations for this apparent underuse of leave policy. If paternity leave is covered under a general leave-of-absence policy, some employees may not be aware of the option. It is equally possible that, although companies have paternity leave policies on the books, the corporate climate does not encourage men to take advantage of them. In follow-up discussions with policy planners, it became evident that in some companies it is considered inappropriate for men to request leaves even when policy exists.

Reinstatement policies for men are similar to those for women--a little less than half of responding companies (46.5%) guaranteed a comparable job; 43.0% guaranteed the same job; and 10.5% guaranteed some job (N=114). If men wished their benefits to continue during unpaid leaves, they had to pay the full cost in 31.2% of the cases, and a greater share of the cost in 8.8% of the cases. Benefits were curtailed during the leave at only a few companies (6.9%) and continued unchanged at over half (53.1%) (N=160).

POLICY VARIATIONS BASED ON COMPANY DIFFERENCES

Parental leave policies varied by region, industry group, level of annual sales and size of work force.

When looking at differences among companies, the N for individual questions is often quite small. For this reason, these comparisons should be considered suggestive rather than conclusive.

REGION

The South lagged behind other regions in offering unpaid leaves and adoption benefits.

There was little regional variation, however, in the granting of disability leave and part-time return from leaves.

POLICIES OFFERED BY REGION*

	Northeast (105 - N - 108)	**Midwest** (110 - N - 117)	**West** (47 - N - 48)	**South** (51 - N - 53)
Unpaid leave for women	55%	54%	55%	39%
Unpaid leave for men	39%	38%	42%	22%
Adoption	35%	32%	15%	17%

* Numbers have been rounded to the nearest percent.

INDUSTRY GROUP

Transportation, communications and public utilities companies were most generous in offering unpaid leaves to women and adoption benefits.

Service and financial companies were most likely to allow women to return to work part time for a limited period after a leave. Manufacturing, construction and agriculture companies tended to be the least likely to grant adoption benefits to parents.

Unpaid leave for men and disability appeared to be offered equally in the various industry groups.

POLICIES OFFERED BY INDUSTRY GROUP*

	Manufacturing/ Construction (179 - N - 190)	Service/ Financial (103 - N - 105)	Transportation/ Communications/Utilities (36 - N - 38)
Unpaid leave for women	51%	49%	68%
Adoption	22%	30%	50%
Part-time return	52%	80%	46%

*Numbers have been rounded to the nearest percent.

ANNUAL SALES

Companies with higher annual sales were most likely to have written policies, offer adoption benefits and allow women to return to work part-time on a limited basis. Such benefits and flexibility were least likely to be found at companies with low sales. Annual sales did not seem to affect the extent to which unpaid leaves were offered to women or men.

POLICIES OFFERED BY LEVEL OF ANNUAL SALES*+

	Higher (89 N 97)	Medium (120 N 134)	Lower (83 N - 104)
Written policies	95%	86%	77%
Adoption	43%	30%	13%
Part-time return	67%	57%	51%

*Higher sales = $2 billion or more; medium sales = $501 million $2 billion; lower sales = $500 million or less.
+Numbers have been rounded to the nearest percent.

SIZE OF WORK FORCE

Size of work force had little effect on policy components.

Adoption benefits was the only area of parental leave policy substantially affected by size of work force. While 39% of larger companies and 31% of medium-sized companies offered adoption policies, only 13% of smaller companies did so.

PART II: POLICY INTO PRACTICE

A report on corporate parental leave policies presents only one part of the picture. As we have already noted concerning leaves "offered" to men, written policies are not necessarily communicated or used. It thus becomes crucial to explore, in depth, how companies implement their policies. To do this we asked not only what length leave employees are taking, but also how policy is communicated, how employees' work is handled and how the transition back to work is managed.

COMMUNICATION OF POLICY

A key component in developing an effective policy is ensuring its clear dissemination throughout the company. Many companies named clear communication of policy as the most important factor in a successful leave (38.8%)(N=237). A company with an accessible, easily understood policy, one that acknowledges parental leave as an expected part of an employee's work life, conveys a strong, positive message of the corporate culture's support of family needs. A policy of this type can also serve as a valuable recruitment tool. While most companies believed their written leave policies were communicated clearly, focus group discussions suggested the contrary. Focus group participants also expressed a number of other concerns which companies either did not recognize or chose not to address. Most of these were related to the career or job impact of taking a leave.

The primary source of anxiety for a great many women was inadequate information about policy. Some participants said that policies were not clearly identified as pertaining to parental leave; instead, descriptions of policy were fragmented between disability policies and personal leave policies. Others reported difficulty in locating a description of policy. The lack of complete and available information for employees and supervisors sometimes resulted in inconsistent or incorrect interpretations of policy.

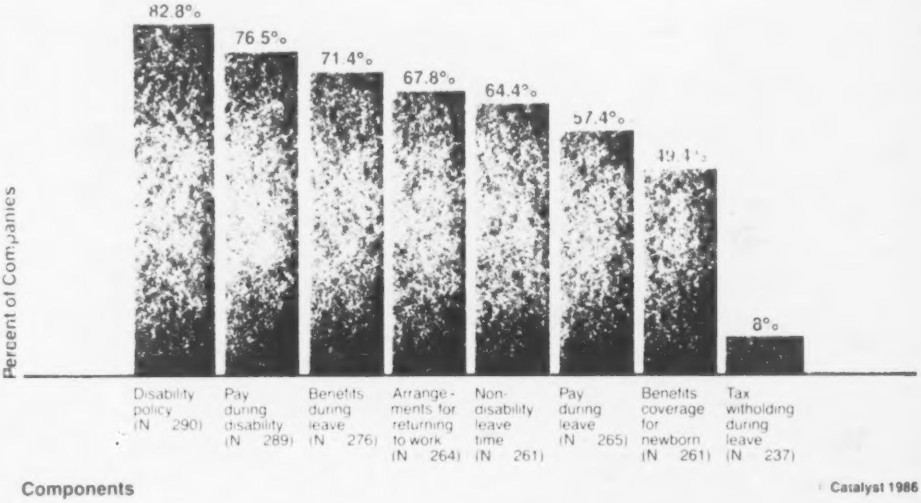
The fundamental step in good communication is providing employees with information about leave policy. This means not only making the information available, but conveying it in a written format that can be easily understood. To find out how employees learned about leaves, employers were asked to name employees' primary source of policy information. The most common responses included human resources personnel, employee handbooks or supervisors.

Some aspects of leave policy are neglected in communications.

Responses to a question about the aspects of leave policies included in employee handbooks or brochures indicated that some important areas of policy were generally included, but others were omitted. Companies named the following as the most commonly included features: disability policy, pay during disability and benefits during the leave.

COMPONENTS OF POLICY EXPLAINED IN EMPLOYEE HANDBOOKS OR BROCHURES

(Multiple responses possible)



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Some critical aspects of leaves were not included in the written policies of a substantial proportion of responding companies. Many excluded policy statements about non-disability leave time (35.6%), pay during non-disability leave (42.6%), arrangements for returning to work (32.2%), benefits coverage for newborns (50.6%) and tax withholding during leave (91.9%). These omissions in written policies create the potential for miscommunication. While focus group participants in general seemed aware of what length leaves they were entitled to, they were often confused about benefits coverage during leave and job reinstatement. Awareness of such information helps women plan their pregnancies around policy. According to a secretary in St. Louis, "I knew from word of mouth that I'd be better off waiting five years before I got pregnant so I could qualify for full benefits."

An important finding that emerged in focus group discussions was that the chief problem was often not the lack of a comprehensive policy, but the fact that few employees or supervisors had knowledge of or access to it. At some companies the employee handbook featured no separate section on parental leaves. The information was instead integrated into sections on disability and personal leaves. One woman found herself completely frustrated. "No one ever explained the policy to me and it wasn't written anywhere," she said. Such difficulties were not uncommon and often fostered an adversarial relationship between employee and company.

The motivation for more or less masking benefits may be a legal one. Companies may be reluctant to differentiate maternity from disability leave, or parental leave from other personal leaves, for fear of seeming to treat pregnant women differently from other employees. Failure to specifically note maternity and parental leave provisions can, however, cause employees to feel uncertain about their entitlements.

When questioned about clarity, almost three-quarters of responding companies said that their policies were clear and that employees had few questions (71.4%). Over a quarter of companies answering the question did recognize a communications problem and reported that their employees frequently posed questions regarding policy (28.6%) (N=336).

Once policy is understood, arranging for parental leaves is easy.

A high proportion of companies (86.4%) responding to the survey question said that setting up a leave period and arranging for the continuation of benefits were relatively easy. Only 13% thought making arrangements for a leave was difficult and even fewer (.6%) considered the process very difficult (N=339). Focus group participants confirmed this finding.

Few exceptions are made to policy.

The survey results revealed that the conditions set forth in formal written policy are adhered to fairly rigidly. When asked if exceptions were made to policy, three-quarters of responding companies said that their policies had little or no flexibility (73.3%). Slightly over one quarter do make exceptions (26.7%), however, and nearly all of these companies indicated that flexibility is allowed equally for managers and non-managers (N=330).

Focus group discussions also confirmed that exceptions to policy were made equally for managers and non-managers. The most common exceptions seemed to be negotiating for the same, rather than a comparable, position upon return and returning to work part-time.

When Catalyst inquired how conditions are determined for maternity leave, other than disability, over half of responding companies said that formal written policy is adhered to (58.8%). The next most frequent response was that conditions are determined by the employee in conjunction with his or her supervisor (13.8%). Another five percent reported that the supervisor alone set the conditions, and 22.5% named another party as well, e.g. the supervisor in conjunction with the human resources department (N=320).

Companies rarely address a number of other employee concerns.

Disseminating policy is only the first stage of adequate communication concerning parental leaves. Female focus group participants discussed several communications issues not addressed by companies and of which they seemed unaware.

- **Discomfort over informing supervisors about their pregnancies.**

  Women often felt anxious about telling their supervisors they were pregnant. They feared that once they announced their condition, they would be treated differently and given less challenging assignments. Many felt that pregnancy called attention to the fact that they were female and undermined their credibility as managers or workers.

- **Difficulty convincing supervisors of their commitment.**

  In many cases pregnancy seemed to change supervisors' perceptions of their employees' commitment. Focus group participants repeatedly told of difficulties assuring supervisors that they would return from leaves. "I told them right away that I was coming back but they didn't believe me," one woman reported. "No matter how many times I told them they were always talking as if I wouldn't return." In a similar case, a financial manager on the west coast described how her supervisors took away all her accounts and refused to give her any new ones despite her insistance that she was definitely coming back.

- **Lack of assurance about the impact on their careers.**

  A more long-range worry for women was how taking a leave might affect their opportunities for career advancement. A management-level woman in St. Louis said, "I would have liked to have had discussions with my supervisor about my further development and future career plans. Then I would have left with the feeling that I had a job worth returning to."

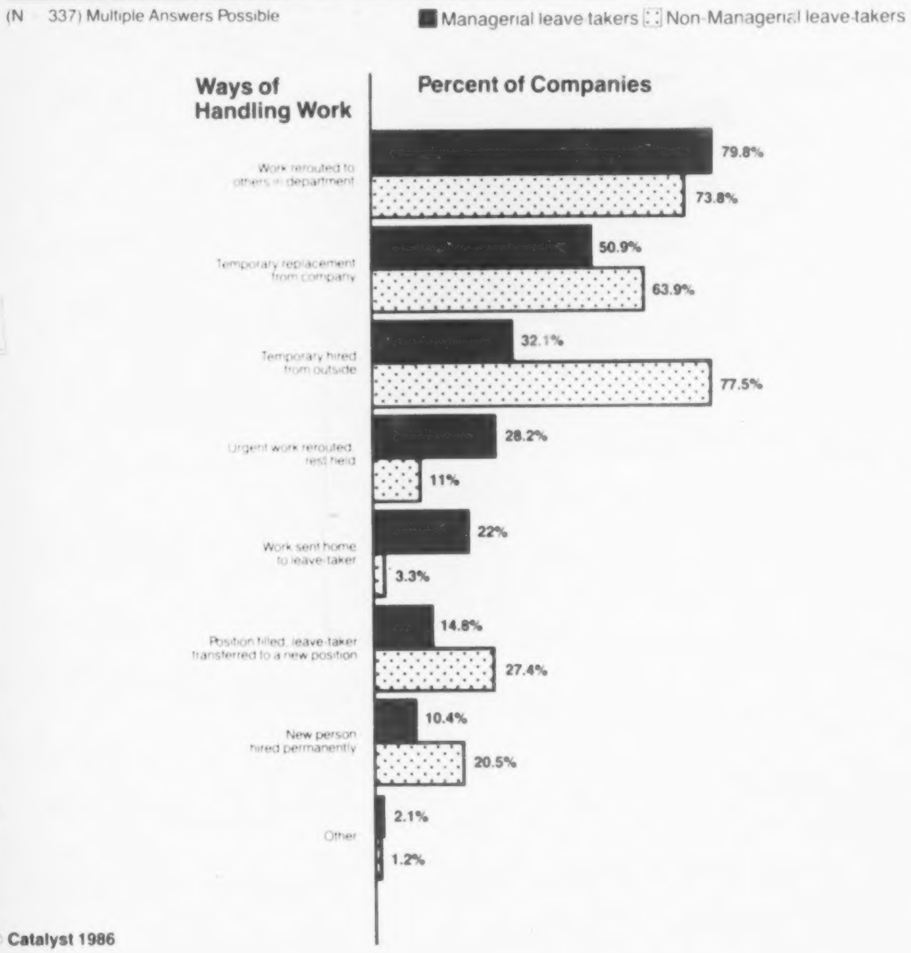
HOW WORK IS HANDLED DURING LEAVES

One concern that surfaces in almost every discussion of parental leave is how the company will survive the absence of a leave-taker. Since large numbers of employees are now regularly taking leaves, the issue of how to handle work without impairing productivity is of paramount importance to employers. Companies reported considerable variation in their methods of dealing with the situation. Certain specific strategies, such as rerouting work to others in the department, were commonly used for both managerial and non-managerial leave-takers. Other strategies were used predominantly with one group or the other. For both groups, planning well in advance for a leave and involving the leave-taker in any arrangements were essential to handling work effectively.

The main strategies for handling work during a leave are the same for managers and non-managers, but some of the approaches differ.

Respondent companies reported that the work of any leave-taker was handled primarily by rerouting it to others in the same department, or by hiring a temporary replacement either from inside or from outside the company. When a temporary replacement for a manager was hired, however, the replacement was generally asked to assume only part a of the customary work load. It was also more common with managers to have only urgent work rerouted; the rest was either held or sent to the leave-takers' homes.

HOW WORK IS HANDLED FOR MANAGERIAL AND NON-MANAGERIAL LEAVE-TAKERS



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Many managerial-level women work at home.

There is some indication that the extent of work managers completed at home during their leaves was underreported in Catalyst's questionnaire. About a quarter of respondent companies cited this as one way work is handled. The indication from focus groups, however, is that women are doing far more work at home than companies realize. Almost all managerial-level women in the focus groups reported that they had completed some work while officially out on leave, ranging from writing reports, receiving and handling mail and taking phone calls, to going in to the office occasionally or conducting meetings at home. Except for the disability period, this work was unpaid. One financial analyst said, "People were delivering material to me in the hospital every day for a week. When I got home, I had office mail dropped off twice a week."

For the most part, managerial leave-takers reported working at home during their leaves. The attitude of one focus group participant was typical: "I wanted to keep my hand in and find out what was going on while I wasn't there," she said. She, however, atypically chose to go in to the office one day a week during her leave to maintain contact. For the most part women seemed to enjoy doing some work during their leaves, although a few regretted it later. Employees' attitudes depended almost exclusively on the size of the work load and the degree to which they were pressured into working.

Handling the work of leave-takers is an ongoing concern at most companies.

Even if individual, short-term arrangements are satisfactory, handling work is a major issue for employers in considering extended leaves and in developing innovative policies.

Once implemented, the arrangements for handling the work of leave-takers were usually satisfactory. According to 15.9% of respondents, the practices used in handling the work of managerial women on leave were very satisfactory; 68.9% described their practices as satisfactory. Only a few considered their arrangements somewhat unsatisfactory (14.9%) or unsatisfactory (.3%)(N=308). These figures were almost identical concerning the work of non-managerial women.

Focus group participants said that advance planning and involving leave-takers in the arrangements were critical to handling work effectively.

By devising methods of handling work long before they left, both managers and non-managers minimized disruptions in their departments. For managers, planning meant assessing their work loads, determining what work to delegate and to whom, making arrangements for handling clients and subordinates and deciding what projects could be deferred until their return. To facilitate planning they also tried to complete current projects and avoid taking on new ones. As an example, a banking officer whose job featured a high level of customer contact wrote a memo to her supervisor during her seventh month which outlined her suggestions for selecting and training a temporary replacement. She then drafted a letter to each of her customers, telling them of her pregnancy and listing the names of her replacement and her supervisor. "They appreciated the fact that I had given some thought to how we could maintain the status quo until I got back," she said.

Non-managerial focus group participants reported that they generally planned for their leaves by providing written instructions and schedules and by training their replacements. One administrative assistant said, "Because I care about my boss and wanted everything to run smoothly, I wrote a manual of everything I do before I left. I also told the other secretaries where all the information was located so that if somebody called with a question they could find the answer without any trouble."

In planning for handling work during their leaves, both managerial and non-managerial women displayed a strong sense of responsibility to their jobs, coworkers and supervisors.

Non-managers and managers alike demonstrated commitment to work above and beyond the call of duty. Many non-managers completed extra work before their leaves to prepare for a replacement, or telephoned the office during their leaves to answer questions about their work. It was not uncommon for a manager to plan her pregnancy around a company's down-time.

As one woman explained, "You owe it to yourself to take care of what you're working on. It's called professionalism." Such commitment made the handling of work smoother and the leave-taker's return easier.

Work was handled better when supervisors participated in leave planning.

One problem mentioned by a number of focus group participants was the lack of participation by supervisors in planning for handling work. To a number of employees it seemed as if their bosses did not anticipate accurately the impact of an impending absence, nor did they understand what their jobs entailed. Several focus group participants complained that temporary replacements were not hired far enough in advance to receive adequate training . Often leave-takers felt they had to push their supervisors into preparing for their leaves. "My boss didn't want to face the fact that I was leaving," said one employee. "I had to hound him and say 'let's sit down and plan this.' "

Survey respondents commented on the positive and negative aspects of their arrangements for handling work. Assigning individuals within a department or company to serve as temporary replacements elicited such positive comments as "provides opportunitie for greater cross-training," and "if the incumbent does not return, a trained and available person is already on the payroll to take over for her." When work is rerouted, one disadvantage can be the imposition of extra work on other employees. Disadvantages of hiring outside temporary replacements included the expense and the temporary loss in productivity due to their inexperience. Supervisors who were uncertain about whether or not employees would return displayed the greatest difficulty in making appropriate arrangements.

Many companies reported that their staffs found it considerably easier to handle the work of non-managerial than managerial leave-takers. Supervisory and decision-making abilities were perceived as being more difficult to replace.

THE TRANSITION BACK TO WORK

One of the most promising options for parental leave policies and practices is allowing leave-takers to return to work on a part-time schedule. Giving new parents a limited period in which they can work part time provides them with an opportunity to make the transition from full-time parents to full-time employees. A part-time return provision can last anywhere from a few weeks to several months.

Many women want to return on a limited part-time basis.

When asked which aspect of their leave they would prefer to have changed, most focus group participants replied that they wished they could have returned to work part time or on a flexible schedule. While some employees would have preferred to be able to work part time permanently, many would have been content with being allowed a few months on a part-time schedule. "Even one or two weeks of partial work (four full days a week or five partial days) would have made the transition more efficient for everyone," one woman said. "It's very difficult to jump right in and pick up exactly where you left off."

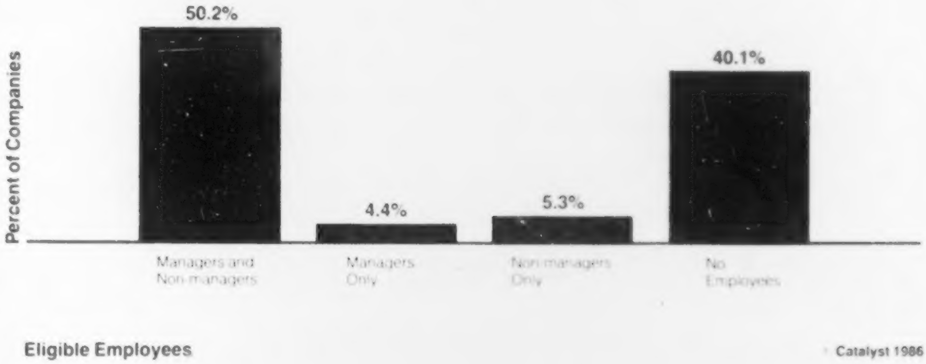
Participants who were able to arrange a limited part-time return were quite satisfied with the results. Some used the extra day or two at home to test out child care arrangements, so they would feel comfortable leaving the infant and returning to work full time. Others found that part-time schedules allowed them to ease back into hectic jobs. This was particularly appreciated when a colicky baby prevented its mother from enjoying a full night's sleep. Many employees reported that they were able to do most or all of their jobs in less time by working more efficiently.

Part-time returns are not always easy to arrange.

A limited part-time return option, though rarely part of formal policy, is available in some form in many companies. Sixty percent of corporate respondents said that some employees had been allowed to return to work part time on a limited basis. Most of these reported having allowed both managers and non-managers the option. At only a few companies were gradual returns restricted to either managers or non-managers.

COMPANIES ALLOWING SOME EMPLOYEES TO RETURN PART TIME FOR A LIMITED PERIOD

(N = 339)



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Managers are allowed more generous terms than non-managers when returning part time. Managers can often retain their jobs, working on prorated salaries and receiving partial or full benefits. Sometimes a company will create new jobs by redefining managerial responsibilities so women can handle the work on a part-time schedule.

A common complaint among managers who had chosen part-time schedules was that heavy work loads and pressure from supervisors sometimes prevented them from following through on their choices. One manager who had arranged a three-day work week found the schedule impossible to maintain. "The company was going through an acquisition and there were unusual circumstances," she said. "The net result was that during my second week back, I ended up working until two o'clock in the morning, five days in a row. My part-time schedule was short-lived, to say the least."

The risk that a planned part-time schedule will collapse is much higher for a manager than for a non-manager. In most cases, part-time schedules were also easier for non-managers to arrange. The trade-off, however, was that non-managers returning part time frequently had to join their companies' in-house temporary pools or allow themselves to be placed in different jobs. This often meant a salary reduction and slowed career progress.

PART III: CORPORATE ATTITUDES AND EVOLVING POLICY

By researching current policies and practices Catalyst obtained a picture of the kinds of leaves that are currently being offered and taken. By probing corporate attitudes toward leaves and related policy options the study uncovered several barriers to policy development, and provided some insights into possible directions for the future.

WHAT DETERMINES A LEAVE'S SUCCESS

Companies and employees have different standards for evaluating the success of a leave. Employers' primary concerns are policy-related, having to do with how well policy is communicated and how equitably it is applied. Another major concern for employers has been getting leave-takers back to work as soon as possible. Employees, on the other hand, naturally view parental leave as a more personal issue. While companies' concerns are critical in designing leave policy, the concerns of employees are equally important.

CORPORATE PERSPECTIVES

When asked, "What was the most important factor in making the handling of parental leaves successful for your company?," 38.8% of corporate respondents cited either good communication about policy or clarity of policy, and another 29.1% cited fairness in administrating policy. Only 14.3% named attention to individual leave-takers' needs. The remaining 17.7% cited other factors, including having adequate means of handling a leave-taker's work, cooperation between supervisor and employee and being promptly informed of an employee's decision not to return to work (N=237). Good communication, clarity of policy and equity were the most important factors cited by corporate respondents for judging the success of a leave.

- **Clarity and communication**

  Employers cited the importance of communicating the details of leave policy, including benefits, compensation and job guarantees, to all employees. They believe that when employees understand policy well in advance of the actual leave, they will gain a clearer view of their entitlements and will have fewer unmet expectations. According to one human resources executive, "A successful leave depends upon broad, regular review of policy with the candidate well in advance of the anticipated commencement of the leave." Focus group participants also mentioned this sort of communication as the best way to avoid misunderstandings.

- **Equity**

  In naming equity as a factor crucial to successful leaves, companies voiced concerns about the fairness of their policies. One pertinent issue is ensuring that policy be applied equally to all new parent employees. Another is that parent employees do not receive benefits that are not provided to non-parent employees. Companies' concerns about equity may also be prompted by legal considerations, specifically by fears of violating the Pregnancy Discrimination Act.

- **Being informed about an employee's plans**

  Companies must plan for employees' leaves and for the period following. If a woman does not intend to return to work, the company must seek a replacement for her. It is therefore crucial for companies to know employees' intentions as early as possible.

One theme that emerged repeatedly in companies' comments on the survey and in interviews with human resources executives was the fear that employees would not return. The grounds for this concern are hard to pinpoint. One possible explanation may be that employers who have had one or two bad experiences in this regard expect to be "burned"--they automatically assume that leave-takers will not return. The assumption that women do not return from parental leaves is not, in any case, based on observation of an actual trend. Companies do not appear to be tracking the precise number of women who fail to return to work.

EMPLOYEES' PERSPECTIVES

Understanding policy and being treated fairly were important to leave-takers, but the factors that were considered most crucial to the success of a leave were being able to return to work well rested, sufficient time to make the transition back to full-time work and reinstatement to the same job. Obtaining satisfactory child care was considered an essential factor by most employees.

o **Adequate leave time with job guarantee**

Focus group participants mentioned the possibility of a job guarantee as a key factor in deciding what length leave to take. The prevailing tendency was for women to take as much time as they could and still be reinstated to their regular jobs. In many companies job guarantees applied only to the period of disability. As a result, large numbers of employees were forced to return to work before they were physically and emotionally ready. It took these women quite a while to be as productive as they had been before leaving. One focus group participant noted that returning to work early prolonged her readjustment period. "I found it hard to get back to functioning at my usual pace," she said, "because I was working a full day and getting up in the middle of the night to care for the baby." When asked from their dual perspectives as mothers and employees what length leave they would have liked and what length they would recommend for policy, focus group participants most frequently suggested a period of three months.

Broken into its components, a three-month leave would probably consist of a disability leave plus an additional month to a month and a half unpaid leave. Although every effort was made to encourage women to freely imagine ideal leave lengths, they rarely responded by choosing lengthy leaves.

The focus group finding of three months corroborates that of a poll conducted by Working Mother magazine in 1983. In that poll, which tabulated replies from over 2,000 working women, 45% of respondents felt that three months should be made the standard length of a paid maternity leave. Twenty-four percent said six weeks should be standard. These women, like those in Catalyst's focus group, were not requesting excessively long leaves.

- **Flexible return to work**

Although the women Catalyst spoke with do not demand extensive leaves, they do value the opportunity to make a gradual transition back to work through a limited part-time schedule. In virtually every focus group, women lamented the fact that they had no alternative to a full-time work schedule and expressed the wish that even a short period of part-time work were possible. Many found that serving as full-time mothers on Sunday and full-time employees on Monday was an abrupt and disruptive change. Others said that a limited part-time schedule would allow them to become comfortable with their child care arrangements so that, as one woman remarked, "I wouldn't feel like I was leaving my baby with a total stranger for an entire day." Several women who had been able to arrange part-time returns said the schedule gave them time to develop confidence in their ability to successfully juggle their dual roles.

- **Stable, quality child care**

  Women indicated that the most critical factor in being able to return to work and stay on the job is adequate child care. Employees are concerned about both the quality and the reliability of care.

  A management consultant who had had an excellent child care arrangement that fell through said, "The hardest thing is to go to work with doubts about what's happening at home. If your child care is good, you can be yourself. If it isn't, you can't function." Many women reported having difficulty locating and maintaining satisfactory child care. They also complained about the lack of support systems when an arrangement collapsed or a child became ill. These factors combined to make many employees continuously apprehensive about their return to work.

Other factors employees considered important to a successful leave were:

- **Income replacement during leaves**

  Disability at partial salary replacement and unpaid leave meant loss of income, which prevented some women from taking as much time as they needed emotionally and physically.

- **The attitudes of supervisors and coworkers**

  Employees made easier transitions back to work when their supervisors and coworkers were supportive of their return. For supervisors this meant not begrudging the employee's absence and understanding her need to maintain a standard schedule. The resentment of coworkers who had been given the responsibility for leave-takers' work was also problematic.

- **Work load on return**

  Focus group participants expressed an almost unanimous desire to return to a manageable, reasonable work load. Several had returned to their jobs to find that work had accumulated while they were out. Instead of being asked to gradually catch up, many women felt that they were expected to make the work load disappear overnight.

RECONCILING THE TWO PERSPECTIVES

The challenge for policy planners and implementers is to design a policy that is clear, specific and well-defined, but provides the flexibility to address individual employees' needs.

WHAT COMPANIES CONSIDER A REASONABLE LEAVE LENGTH

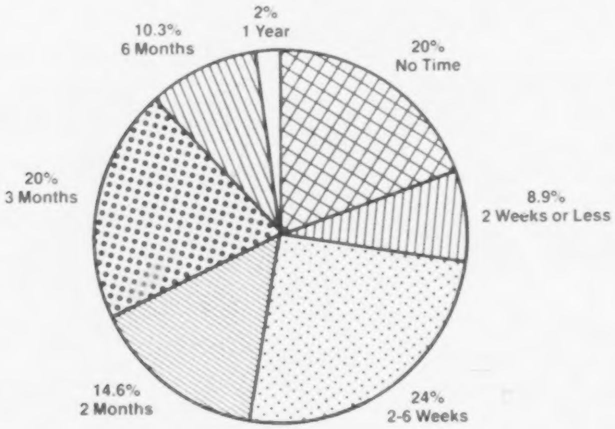
An indication of possible future policy trends may be found in corporate attitudes toward the length of unpaid leaves. To learn more about this aspect of parental leave, Catalyst asked human resources executives how long an unpaid leave is considered reasonable, irrespective of what may be stated in official policy. Additionally, for companies with an unpaid leave policy, the lengths of leave offered were compared with those considered reasonable.

More respondents considered it reasonable for women to take unpaid leaves than actually included such a practice in written policy.

Although just over half of responding companies now include unpaid leave in their parental leave policies, fully 80% of respondents considered it reasonable for women to take some time off beyond disability. The amount of time that was considered reasonable varied. A few (2%) put it at one year, but the majority of answers fell in the range between two weeks and three months.

AMOUNT OF UNPAID LEAVE TIME RESPONDENTS CONSIDERED REASONABLE FOR WOMEN, REGARDLESS OF OFFICIAL POLICY

(N = 349)



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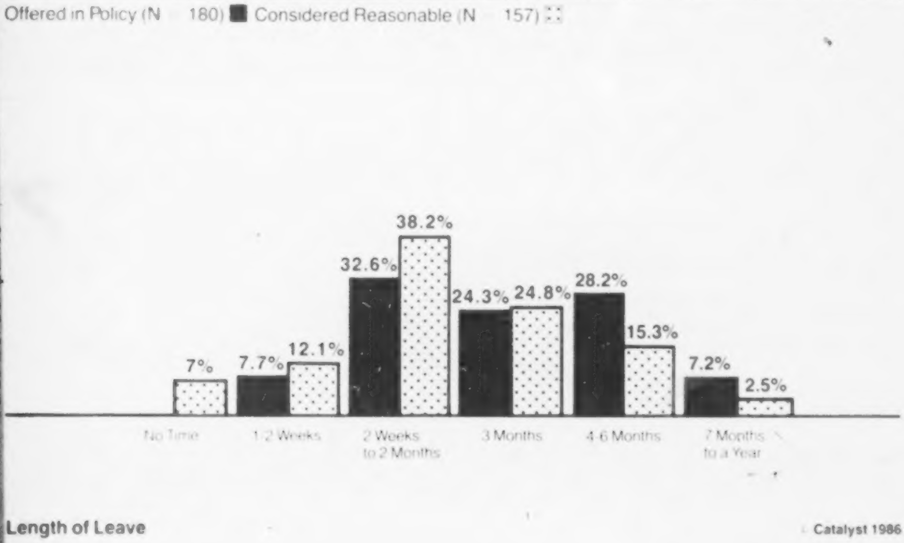
One possible explanation for the difference between policy and attitude may be that companies want to have some say in which employees are granted leaves. By not including unpaid leave in policy and thus making it available to everyone, employers can use such leaves to reward valued employees. The reverse may be true as well; not including unpaid leave in policy can be a way of encouraging unsatisfactory employees not to return. Providing unpaid leaves to natural mothers might also legally obligate a company to offer leaves to natural fathers and adoptive parents as well, a step that many companies may not be ready to take.

Corporations sanction slightly less unpaid leave for women than is offered in policy.

Although 28.2% of companies offered women unpaid leaves of 4-6 months, only 15.3% considered it reasonable for them to take that much time off. In addition, 7% of companies that had unpaid leave policies did not sanction their use.

COMPARISON OF POLICY AND ATTITUDE FOR COMPANIES WITH AN UNPAID LEAVE POLICY FOR WOMEN



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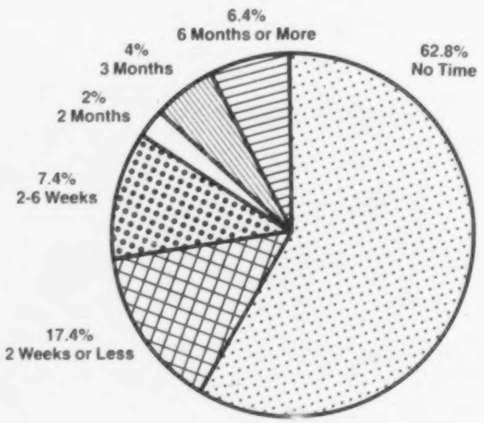
Leaves for men are less likely to be officially sanctioned than leaves for women. Corporations take a far more negative view of unpaid leaves for men than they do unpaid leaves for women. Almost two-thirds of total respondents did not consider it reasonable for men to take any parental leave whatsoever. Another quarter of respondents thought it reasonable for men to take six weeks' leave or less.

AMOUNT OF UNPAID LEAVE TIME RESPONDENTS
CONSIDERED REASONABLE FOR MEN, REGARDLESS OF OFFICIAL POLICY

(N = 298)



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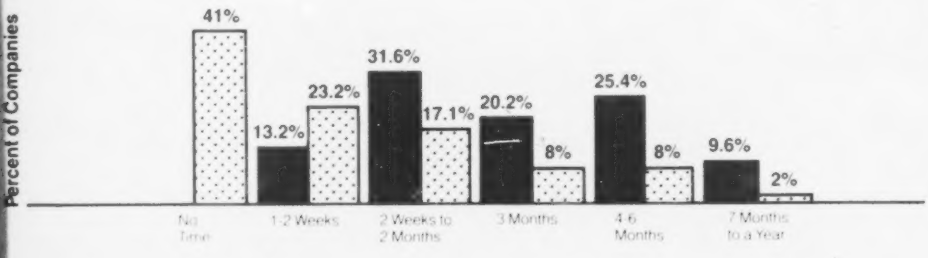
Even among companies that currently offer unpaid leaves to men, many thought it unreasonable for men to take them. Fully 41% of companies with unpaid leave policies for men did not sanction their using the policy, and only 18% of respondents considered it reasonable for men to take leaves of three months or longer. These results may explain at least in part why men are not taking advantage of the leaves that policies offer.

COMPARISON OF POLICY AND ATTITUDE FOR COMPANIES WITH AN UNPAID LEAVE POLICY FOR MEN

Offered in Policy (N = 114) ■ Considered Reasonable (N = 99) ⁚⁚



Length of Leave

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Management sends subtle messages to employees about what the corporate culture really sanctions.

Interviews with human resources executives and discussions with focus groups revealed some of the ways employees find out what the corporate culture sanctions as opposed to what policy offers. One lower-level manager who wished to take unpaid leave was told, "That policy was designed for secretaries, not for professional employees." Another woman studied the situation on her own. "If you want to take three months off and get back into the same area," she concluded, "you're taking a risk." In still another example of underlying messages, a management consultant reported that although other women in her company had arranged part-time schedules, she was reluctant to ask for one because she surmised that her request would have had "negative connotations."

Companies in the West were more likely to consider it reasonable for women to take longer leaves than companies in other regions.

AMOUNT OF LEAVE TIME CONSIDERED REASONABLE FOR WOMEN BY REGION*

	Northeast (N=112)	**Midwest** (N=124)	**South** (N=54)	**West** (N=50)
No time	21%	22%	23%	6%
2-6 weeks	26%	39%	33%	36%
2-3 months	35%	30%	33%	46%
6 or more months	18%	9%	11%	12%

*Numbers have been rounded to the nearest percent.

Larger companies as measured by size of work force were more likely to sanction longer leaves for women than medium-sized and smaller companies.

Fully 42.5% of larger companies consider a two- to three-month leave reasonable, while only 28.2% and 34.2% of medium-sized and smaller companies, respectively, feel the same way. One reason for this variation may be that a company with a larger work force is better able to reallocate personnel during leave periods.

AMOUNT OF LEAVE TIME CONSIDERED REASONABLE FOR WOMEN BY SIZE OF WORK FORCE*

	Larger (N=106)	Medium (N=117)	Smaller (N=120)
No time	16%	21.4%	20.8%
2-6 weeks	24.5%	39.3%	35%
2-3 months	42.5%	28.2%	34.2%
6 months or more	17%	11.1%	10%

*Larger work force = 9,500 or more employees; medium work force = 2500-9500 employees; smaller work force = 2,500 or fewer employees.

Higher sales companies were more likely to be amenable to leave time for men than medium and lower sales companies.

AMOUNT OF LEAVE TIME CONSIDERED REASONABLE FOR MEN BY LEVEL OF ANNUAL SALES*+

	Higher (N=76)	Medium (N=112)	Lower (N=81)
No time	50%	66%	68%
2-6 weeks	30%	22%	28%
2-3 months	10%	6%	2%
6 months or more	10%	6%	2%

*Higher sales = $2 billion or more; medium sales = $501 million-$2 billion; lower sales = $500 million or less.
+Numbers have been rounded to the nearest percent.

FUTURE POLICY DIRECTIONS

To gain some sense of future policy directions, the Catalyst survey queried companies about their attitudes toward a variety of policy options. Respondents were asked to imagine themselves a company's director of human resources, in the process of writing an official parental leave policy. They were then asked which of a number of policy components they would be willing to consider. Their responses provided a perspective on their priorities.

The options to which human resources policy planners were most receptive included: disability policies, three to six months' unpaid leave for women, part-time return for women and two weeks' unpaid leave for men. The least popular options were paid leave time and extended leaves for either female or male employees. The options chosen are consistent with the direction in which large companies seem to be moving.

COMPARISON OF FUTURE POLICY DIRECTIONS AND CURRENT POLICY OPTIONS

Policy Option	**Number of Respondents Open To Option**	**Number of Companies Currently Offering Option**
Short-term disability policy with a job guarantee	317	281
Unpaid leave (beyond disability) of 3-6 Months for new mothers	253	95
Return to a part-time schedule for a limited time period for new mothers	226	203**
Two weeks unpaid parental leave beyond vacations for new fathers	193	15
An eligibility requirement for leave of 2-12 months employment for all employees	147	N/A*
Flexibility in the work schedules of new parents	133	N/A*

Shared parental leaves for spouses who work for the same company	122	N/A*
Part-time work for a limited period for new fathers	109	N/A*
A limited period of working at home allowed to women after leaves end	87	N/A*
Unpaid leave of 1-6 months for new fathers	83	88
An eligibility requirement for leave of 13-24 months employment for all employees	83	N/A*
One to two weeks paid leave other than vacation for new fathers	45	4
Some paid leave beyond disability for new mothers	36	25
Unpaid leave (beyond disability) of 6-12 months for new mothers	32	12

*Comparable figures are not available.
** Currently offered on an informal basis, not as a regular policy feature.

The preferred policy options of human resources professionals were fairly consistent based on industry group, level of annual sales, size of work force and region.

Policy planners at service and financial companies were generally more interested in innovative options than policy planners at other kinds of companies.

PREFERRED POLICY OPTIONS BY INDUSTRY GROUP

	Manufacturing/ Construction (N=218)	Service/ Financial (N=114)	Transportation/ Communication (N=43)
Unpaid leave of three to six months for new mothers	64.7%	73.7%	60.5%
Part-time schedule on a limited basis for new mothers	59.2%	64%	48.8%
Work at home on a limited basis for new mothers	21.1%	28.9%	13.9%
Shared leave time if husband and wife work at same company	30.3%	38.6%	23.3%
Policy of flexibility in work schedules for all employees	33.9%	39.5%	25.6%

Policy planners at companies with lower levels of annual sales were less willing to consider extended leaves of one to six months for men than they were to consider two weeks' unpaid leave.

In companies with higher annual sales, the differential was much smaller. Lower sales companies were also more interested than those with higher sales in creating eligibility requirements for parental leaves.

PREFERRED POLICY OPTIONS BY LEVEL OF ANNUAL SALES*

	Higher (N=98)	Medium (N=135)	Lower (N=104)
Two weeks' unpaid leave for new fathers	40.8%	50.4%	56.7%
One to six months' unpaid leave for new fathers	34.7%	25.9%	9.6%
A 2-12 month eligibility requirement for leave for all employees	32.7%	39.3%	44.2%

* Higher sales = $2 billion or more; medium sales = $501 million-$2 billion; lower sales = $500 million or less.

At companies with smaller employee populations, policy planners are less willing to consider longer unpaid leaves for men.

If the size of work force rather than level of annual sales is used to measure the size of a company, findings corroborate the fact that smaller companies are less amenable to longer unpaid leaves for men.

PREFERRED POLICY OPTIONS BY SIZE OF WORK FORCE*+

	Larger (N=121)	Medium (N=124)	Smaller (N=133)
Two weeks' unpaid leave for new fathers	43%	46%	63%
One to six months' unpaid leave for new fathers	31%	20%	14%
A 2-12 month eligibility requirement	30%	39%	47%

* Larger work force = 9,500 or more employees; medium work force = 2,500-9,500 employees; smaller work force = 2,500 or fewer employees.

+ Numbers have been rounded to the nearest percents.

Limited part-time schedules and working at home were favored less often by Southern policymakers than by those in other regions.

PREFERRED POLICY OPTIONS BY REGION*

	Northeast (N=123)	Midwest (N=138)	South (N=58)	West (N=54)
Limited part-time returns for new mothers	65%	58%	48%	57%
Work at home for a limited period for new mothers	30%	23%	10%	17%

*Numbers have been rounded to the nearest percent.

Female respondents were somewhat more receptive to new policy options than male respondents.

A test for the correlation between gender of respondent and response was minor. While such differences were small, they were nevertheless consistent. Female respondents tended to be more willing to consider innovative policy components than male respondents.

PREFERRED POLICY OPTIONS BY GENDER OF RESPONDENT*

	Female (N=160)	**Male** (N=173)
Part-time schedule on a limited basis for new mothers	67%	54%
Part-time work on limited basis for new fathers	34%	23%
Two weeks' unpaid leave for new fathers	56%	46%

*Numbers have been rounded to the nearest percent.

Human resources executives were most concerned about handling the work of absent employees, losing employees due to inadequate company policies and the equity of granting leaves to new parents and not to other employees.

When asked which components of a parental leave policy they would be willing to consider, most responding human resources executives listed more options than their companies currently offered. Respondents were then asked to name three chief concerns in considering policy options. Their responses point up some of the issues that militate against the implementation of new policy.

The three most common concerns were handling the leave-taker's work (308 companies), losing valuable employees if the company does not meet the needs of a changing work force (238 companies) and the equity of granting leaves to new parents but not to other employees (205 companies). Concerns of lesser importance were obtaining high productivity in departments where employees work on part-time schedules, the possibility that employees will not return after leaves and containing the cost of parental benefits.

Considering the most frequently cited concern--handling work--it is hardly surprising that leaves of 6-12 months for women and 1-6 months for men were unpopular options. On the other hand, the long-term productivity issue (loss of valuable employees) may explain companies' receptivity to flexible returns and granting sufficient leave time. Finally, employers' disinterest in paid leaves for parents may be tied to concerns over equity or the cost of such leaves.

BARRIERS TO POLICY DEVELOPMENT

In considering policy changes, human resources planners are torn between two opposing forces. One is the changing nature of the work force and the resultant demand for policy that is geared to employee needs. The other is concern over the rise in costs and the loss in short-term productivity that can result from increased leave-taking.

In recent years, working parents have changed in their perceptions of themselves and their ability to manage work and family. The time when they felt obliged to shoulder their responsibilites with a minimum of outside help has passed. Working parents now realize that fulfilling their responsibilities as workers or as parents is unlikely without some type of societal supports. Because perceived needs have changed, working parents--particularly women--are now more likely to assess employer attitudes and to scrutinize benefits packages.

Meanwhile, companies are discovering that meeting the needs of today's working parents can conflict with such corporate concerns as maintaining short-term productivity and containing costs. Future policy changes will depend on the outcome of this tug-of-war between two divergent constituencies.

Lack of data on leave-taking is a handicap in changing policy.

Concerns over the loss in short-term productivity and the handling of work during unpaid leaves were mentioned not only in the survey but in focus group discussion and interviews with human resources executives. Despite their anxieties, most companies are monitoring neither the number of employees taking leaves nor the number not returning from leaves. One hundred thirty companies, or 33.8% of all respondents, indicated that data was unavailable regarding the number of managerial women who took leaves in their companies during the previous year. Another 91 companies (23.7%) did not respond to the question. Figures on non-managerial women were equally hard to come by. In addition, large numbers of companies had no figures on leave-takers who did not return; 103 companies (26.8%) said they did not know and 110 companies (28.6%) did not respond. Interviews with human resources executives revealed that they did not keep such statistics.

Companies often justified or seemed proud of, their lack of statistics, asserting that their nonexistence proved management did not discriminate. Noting which disabilities were awarded for pregnancy, they claimed, might leave them open to charges of sex bias. While corporate concern regarding discrimination may be well founded, lack of data on leave-taking is a severe handicap in evaluating and modifying policy based on current experience and expressed needs. To get a true picture of the impact of leaves on handling work, companies need to know how many employees are taking leaves and the lengths of the leaves they are taking. Determining how the retention of employees is affected by parental leave policy and whether or not policy is adequate is possible only if companies collect data on leave-takers who do not return and on those who depart permanently within a year after returning.

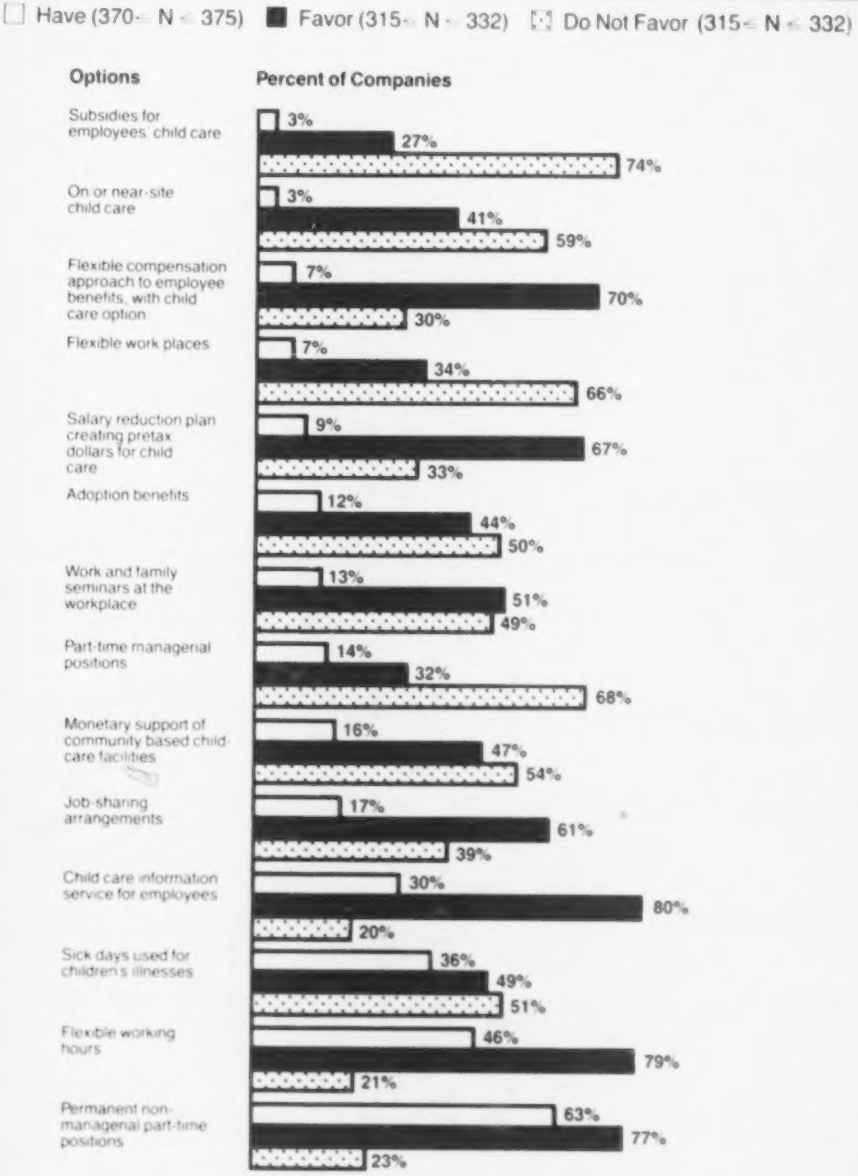
WORK AND FAMILY INITIATIVES

Parental leave must be considered in the context of other work and family supports. Parental leave policy provides an important clue as to a company's attitude toward work and family needs. It gives employees a sense of whether or not the company is supportive of new parents and whether this is a place where women can successfully combine careers and family. Working parents feel a strong need for societal supports, a need which thus far has not been met. The lag has occurred partly because of a piecemeal approach to policy-making. Companies have tried to address one or two problems, but have failed to evolve a comprehensive plan that would meet the needs of this new, and by no means insignificant, segment of the work force.

To learn the level of corporate awareness about work and family initiatives, we asked companies which of a variety of options they now offer and which they would favor implementing. Very few initiatives were offered by vast numbers of companies. Among those that were offered, the most popular included part-time non-managerial positions, flexible work schedules and allowing personal sick days to be used when a child is sick. Among options directly related to child care needs, child care information services and monetary support of community-based child care were considerably more popular than subsidies for employees' child care and on- or near-site child care. Concern over equity may explain these preferences. Direct subsidies for child care and on- or near-site day care could be considered special benefits, since non-parents are obviously excluded. Moreover, on- or near-site day care entails a substantial start-up cost and company involvement.

The work and family initiatives most often favored by companies were child care information services, flexible benefits with a dependent care option, salary reduction plans with a dependent care option, permanent non-managerial part-time positions, job

WORK AND FAMILY INITIATIVES: PRACTICES AND ATTITUDES*



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*Numbers have been rounded to the nearest percent.

sharing and flexible work hours. The options which responding companies favored least were subsidies for employees' child care, part-time managerial positions and flexible workplaces.

Since Catalyst's survey was conducted, more companies have developed work and family initiatives, but the number is still low. The fact remains that a considerable lag exists between the changing needs of the work force and the development of supports to meet those needs.

Variations were seen by industry, level of annual sales and region.

In comparing various kinds of companies it is important to note that the numbers discussed were often small; inferences must therefore be considered tentative.

COMPARISON OF WORK AND FAMILY INITIATIVES BY INDUSTRY GROUP*

	Manufacturing/ Construction (211 ≤ N ≤ 213)	**Service/ Financial** (110 ≤ N ≤ 112)	**Transportation/ Communication** (40 ≤ N ≤ 42)
Monetary support of community child care	19%	13%	5%
Sick days for children's illnesses	34%	44%	28%
Part-time managerial positions	7%	27%	12%
Part-time non-managerial positions	55%	85%	48%
Flexible work schedules	38%	57%	64%

* Numbers have been rounded to the nearest percent.

Companies with higher levels of annual sales offer substantially more extensive work and family initiatives.

COMPARISON OF WORK AND FAMILY INITIATIVES BY LEVEL OF ANNUAL SALES*+

	Higher (97 ≤ N ≤ 98)	Medium (128 ≤ N ≤ 130)	Lower (101 ≤ N ≤ 103)
Child care information service	40%	30%	20%
Work and family seminars	23%	9%	6%
Part-time managerial positions	27%	9%	6%
Part-time non-managerial positions	71%	64%	49%
Flexible work schedules	55%	44%	35%

*Higher sales = $2 billion or more; medium sales = $501 million-$2 billion; lower sales = $500 million or less.

+Numbers have been rounded to the nearest percent.

Regional differences were evident in the types of initiatives offered. Companies in the West and South led in allowing employees to use sick days to care for children who are ill. Western companies were also much more likely to offer flexible work schedules.

Companies in the Northeast were most likely to give monetary support to community child care and to offer child care information services.

COMPARISON OF WORK AND FAMILY INITIATIVES BY REGION*

	Northeast (117≤N≤121)	**Midwest** (133≤N≤135)	**South** (55≤N≤57)	**West** (51≤N≤53)
Monetary support of community child care	23%	13%	13%	6%
Child care information service	43%	27%	16%	20%
Sick days for children's illnesses	30%	37%	46%	45%
Flexible work schedules	40%	45%	47%	60%

* Numbers have been rounded to the nearest percent.

Women favor work and family initiatives more frequently than men.

The respondent's gender substantially influenced his or her attitude toward work and family policies. The most likely explanation for this difference may be that women still find themselves in the position of managing families as well as jobs, and are consequently more sensitive to the need for societal supports.

COMPARISON OF WORK AND FAMILY INITIATIVES BY GENDER OF RESPONDENT

	Female (124≤N≤135)	**Male** (146≤N≤158)
Subsidies for employees' child care	38.5%	19.0%
Work and family seminars at the workplace	61.2%	43.2%
Flexible compensation approach to employee benefits, with child care option	81.0%	64.0%
Adoption benefits	55.0%	39.0%
Part-time managerial positions	40.9%	28.1%
Permanent non-managerial part-time positions	88.3%	72.0%
Flexible workplaces	40.3%	29.6%

PART IV: CATALYST'S POLICY RECOMMENDATIONS

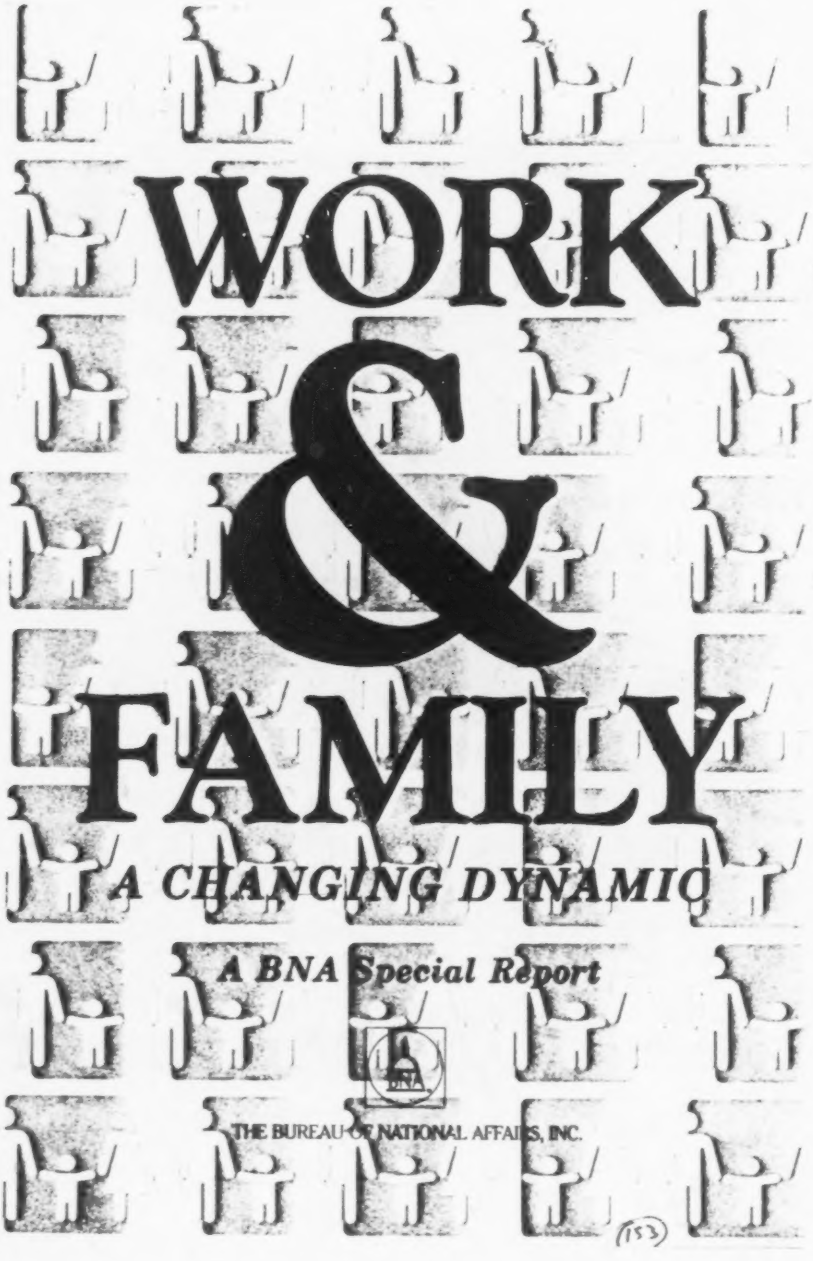
Based on conclusions drawn from this research, Catalyst recommends the following policy components:

- Disability leave with full or partial salary reimbursement
- Additional unpaid parental leave of one to three months
- A transition period of part-time work for one month to one year for returning leave-takers
- Reinstatement to the same or comparable job at all stages of the leave

A parental leave policy should be explicitly communicated in writing, clearly identifiable and distributed to all employees.

These recommendations enable an employer to strike an effective balance between the priorities of a company and those of its employees. From the company's standpoint, the total policy is adequate but not excessive, particularly when a part-time transition period is utilized as an alternative to a lengthier (six months or more) unpaid leave.

From the employer's perspective, the policy takes the leave-taker's career commitment seriously. It allows a reasonable amount of time for physical recovery and adjustment to a new role, but does not encourage a leave length that works against employees' professional goals.



WORK & FAMILY

A CHANGING DYNAMIC

A BNA Special Report

THE BUREAU OF NATIONAL AFFAIRS, INC.

(153)

D. PARENTAL LEAVE

The growing number of parents in the work force and the corresponding change in attitude about work and parenting have started employers talking about the matter of parental leave from work for maternity, paternity, infant care, and adoption. Parental leave has become a public policy issue and is the subject of much current debate.

This section of the special report examines the evolution of corporate leave policies, and provides case studies of leave policies at specific employers.

Maternity Leave

By and large, maternity and parental leave policy in this country has been left to employers in the private sector and to the private fringe-benefit system, the Congressional Research Service reported in July 1985 in *Maternity and Parental Leave Policies: A Comparative Analysis.*

CRS noted that a federal law — the Pregnancy Discrimination Act of 1978, which amended Title VII of the Civil Rights Act of 1964 — prohibits discrimination in employment on the basis of pregnancy, childbirth, or related medical conditions, and requires that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work . . . " [42 USC §2000e(k)].

In its analysis, CRS found that the basic components of maternity-related leave policies, available in varying degrees to workers in the United States and overseas, include:

- job-protected leave for a specified time with protection of seniority, pension, and other benefit entitlements;
- full or partial wage replacement to cover all or a significant part of the job-protected leave; and
- health insurance covering hospitalization and physician care.

Another element of the parental leave question being considered by some employers is allowing new parents some time flexibility on return to work after childbirth — either some period of part-time work or some flexibility in hours, or both.

Maternity leave policies seem to be affected by company size, Bernard Hodes Advertising, a New York City-based firm, concluded in a 1985 report on 153 survey responses. Companies with 500 or more employees, "are noticeably more likely to offer full salary leave than smaller ones," concluded the advertising agency, which based its study on responses to questionnaires sent to the more than

8,500 subscribers to the firm's bimonthly human resources newsletter.

Nearly one-fourth of the companies responding to Bernard Hodes survey allowed employees to utilize any accrued vacation, sick, or personal leave as maternity leave. Some 10 percent of the sample indicated that they offered some type of reduced work schedule as part of their maternity policy. Seventy-five percent of the respondent companies offered a return to work guarantee for women on maternity leave; usually this return to work guarantee was conditioned on employees not being off the job longer that four months. Most of the respondent companies maintained some benefits during maternity leave, with 40 percent continuing all benefits.

> *By and large, maternity and parental leave policy in this country has been left to employers in the private sector and to the private fringe-benefit system, the Congressional Research Service says.*

Half of companies surveyed by Bernard Hodes paid employees on maternity leave their full salary. About one in four paid employees their salary for 16 weeks or less. Only two percent said they extended full salary maternity leave for more than four months. According to Bernard Hodes, the maternity benefits policies often included some combination of fully paid leave and either partial salary payment or unpaid leave.

A BNA's Personnel Policies Forum survey conducted in 1983 showed that approximately 90 percent of 253 employers responding made unpaid maternity leave available to employees. The most common length of maternity leave was six months, although more than one-fourth of employers responding said they had no limit on maternity leave.

Catalyst Study

In 1984, Catalyst launched a national study of corporate parental leave policies, asking some 400 senior human resources planners of leading U.S. companies what options they would consider in developing a new parental leave policy. In its 1986 final *Report on a National Study of Parental Leaves*, Catalyst, a resource for information on career and family trends in the workplace, detailed the responses:

For new mothers:

- 83 percent would provide short-term disability with a job guarantee.
- 66 percent would offer three to six months of unpaid leave (beyond disability).
- 59 percent would allow part-time work schedules for a limited period following the leave.

For new fathers:

- 50 percent would offer two weeks' unpaid non-vacation leave.

For all employees:

- 38 percent would include a two-to-12-month eligibility requirement for leave.

Survey of Law Firms

In its 1986 report on a *Survey on Work Time Options in the Legal Profession*, New Ways to Work (NWW), a non-profit organization which conducts research and serves as a clearinghouse for information on work time options, stated that in a growing number of law firms, corporate law departments, and other legal organizations, employees are requesting leaves to accommodate childbirth and child-rearing. The report was based on 143 responses by legal organizations in San Francisco and Alameda Counties in California.

NWW reported that 82 percent of the respondent corporate legal departments, government agencies, and public interest organizations had maternity leave policies for both attorneys and non-attorneys. In contrast, 35 percent of private law firms reported having a maternity leave policy for attorneys, and 43 percent for non-attorneys.

While most government agencies said they did not offer paid maternity leave to attorneys, NWW reported, those agencies were "quite generous" with regard to the total amount of time allowed — paid and unpaid — for maternity/child care purposes. All the responding government agencies allowed a total leave of at least 16 weeks, with 33 percent allowing more than 26 weeks leave. Twenty-five percent of the private law firms allowed 16-23 weeks, and 33 percent allowed 24-26 weeks. Some 43 percent of the corporations allowed 24-26 weeks total leave; 36 percent, however, allowed less than 12 weeks. Fourteen percent of the firms and 22 percent of the public interest organizations were "flexible" about the total length of maternity leaves, according to NWW.

NWW noted a direct correlation between the size of a private firm and the likelihood that it will have a maternity leave policy. Some 91 percent of the private firms with 75 or more attorneys had a maternity leave policy for attorneys, while 12 percent of those with three to five attorneys had one, NWW reported. Larger firms have had more maternity leaves taken and have a greater likelihood of having a policy, NWW said.

Unions and Maternity Leave

Organized labor generally has favored maternity leave benefits, and, more recently, some labor leaders have supported parental leave benefits, according to the CRS analysis. "However, actual union efforts in this area have not always been vigorous," CRS concluded.

Maternity leave is provided for in about 36 percent of U.S. collective bargaining agreements, according to CRS. Most U.S. collective bargaining agreements that provide maternity leave benefits require a worker to be employed with the company for some period of time, CRS noted.

In its 1986 study of basic patterns in union contracts, BNA's *Collective Bargaining Negotiations and Contracts* service (*CBNC*) reported that leave of absence is provided for maternity in 36 percent of the 400 sample agreements for all industries. Maternity leave was provided in 40 percent of manufacturing agreements and 30 percent of non-manufacturing contracts.

A length-of-service requirement must be met in 23 percent of the contract provisions on maternity leave: A one-year service requirement was imposed in 24 percent of service requirement provisions, three months in 27 percent, and six months in 15 percent. Twenty-five percent of contracts required a physical examination or medical certificate upon return from leave.

The Congressional Research Service report noted that length of maternity leave in collective bargaining agreements is "far from uniform." Under agreements in the *CBNC* study specifying leave duration, the most common period allowed was six months (38 percent). Leave for one year was allowed in 36 percent of such clauses, and leave for either nine and three months was granted in 5 percent. Length of maternity leave was determined by a physician in 34 percent of the contracts that discussed duration.

The effect of maternity leave on seniority was specified in 69 percent of the sample contracts with maternity leave provisions. Of these, 58 percent allowed accumulation of seniority; 38 percent allowed retention of seniority.

CRS concluded in its report that maternity leave did not differ markedly between unionized and non-union companies. CRS did note the conclusion of Richard Freeman and James Medoff in their book, *What Do Unions Do?*: "[N]onunion employers offer more maternity pay with leave while union employers are more likely to guarantee full reemployment rights after maternity."

Future drives by organized labor to unionize new members could center on millions of female workers who want maternity leave benefits, the CRS report suggested. This "would indicate that unions may press with added vigor for maternity leaves."

Organized labor generally has favored maternity leave benefits, but, weakened by economic and social conditions, "unions may find themselves forced to devote their energy and resources to other areas . . . besides maternity leave."

CRS also noted that much of labor has been weakened by economic and social conditions in the early 1980s. This factor "would indicate that unions may find themselves forced to devote their energy and resources to other areas (e.g., wages, work rules, federal labor legislation, and even dealing with the National Labor Relations board under the Reagan Administration) besides maternity leave," CRS concluded.

Unsettled Legal Questions

CRS noted in its report that some states have enacted legislation which goes beyond the Pregnancy Discrimination Act. Two of those laws are being challenged in court, however, and in early 1986, the Supreme Court agreed to decide whether states are free to grant pregnant workers special protections beyond those afforded under the federal law. The Court will review the 1985 ruling of the U.S. Court of Appeals for the Ninth Circuit in *California Savings and Loan Association v. Guerra* (No. 85-494) in which the appeals court decided that the federal and state laws could coexist (37 FEP Cases 849). The appeals court declared that Congress intended "to construct a floor beneath which pregnancy disability benefits may not drop — not a ceiling above which they may not rise."

The California law, passed in 1978, requires employers to grant up to four months of leave to a pregnant worker, and to reinstate her to the same or a similar job. The state law was challenged in 1983 after California Federal Savings and Loan Association denied receptionist Lillian Garland reinstatement to her same or a similar job after she returned from pregnancy leave. Cal Fed argued that the state law was preempted because it exceeded the requirements of the Civil Rights Act of 1964 and the Pregnancy Discrimination Act of 1978. The employer argued that the state law subjected management to reverse discrimination lawsuits by men who enjoy no special protection when they are temporarily disabled.

Also pending before the Supreme Court is a challenge to a Montana law requiring employers to grant reasonable maternity leave to female employees. In 1984 the Montana Supreme Court upheld the state law (36 FEP Cases 1010). The Justices have not yet announced whether they will review the case — *Miller-Wohl Co. v. Commissioner of Labor and Industry of Montana* (No. 84-1545).

In a brief filed with the Supreme Court in November 1985, the Justice

Department argued that both the Montana and the California laws are illegal. The government argued that state laws favoring pregnant workers run afoul of Title VII. In an unusual alliance, the National Organization for Women, the American Civil Liberties Union, the Women's Legal Defense Fund, and the U.S. Chamber of Commerce, among others, have voiced similar arguments in friend-of-the-court briefs. Although the groups differ radically on exactly what should be done about it, the women's groups recommend extending disability rights to everyone. Equal Rights Advocates, a San Francisco-based, public interest group, is representing California groups which have urged that the law be upheld.

Paternity Benefits — Trends

Paternity benefits are not very common, Bernard Hodes Advertising concluded in its 1985 survey. Nonetheless, the existence of paternity leave policies in one out of seven companies surveyed, the advertising agency said, "represents a tremendous leap forward in this area from a generation ago when the underlying concept was virtually nonexistent." The paternity benefit offered most frequently is unpaid leave, Bernard Hodes said.

Approximately two-fifths of the 253 firms surveyed by BNA in 1983 had one or more leave provisions allowing male employees to take time off from work for the birth of their children (PPF Survey No. 136). Among those firms, nearly half allowed employees to use paid vacation or annual leave for such purposes. BNA also reported that companies with more than 1,000 employees were more likely to grant annual leave to an employee for paternity reasons than companies with fewer employees. The provision of paid sick leave for paternity purposes was more common among small companies than large firms, BNA found. There was little difference in the percentage of large and small companies permitting employees to take an unpaid paternity leave.

The maximum amount of unpaid paternity leave granted in firms covered by the BNA survey ranged from five days to one year for plant workers, with a median of 90 days. For office staff, the range was from two days to one year, with a median of 90 days. For managers, the amount ranged from two days to one year, with a median of four months.

Paternity Leave

In its Report on a National Study of Parental Leaves, Catalyst said, "A growing number of companies are also beginning to offer unpaid leaves with job guarantees to natural fathers and adoptive parents." More than a third of the 384 Catalyst survey respondents reported that they offered an unpaid leave with a job guarantee to men. The unpaid leaves offered to men were similar in length to those offered to women — between one and six months.

"[I]t is fairly common for fathers to take a few days off at the time of the child's birth, but they rarely request this time as a separate paternity leave."

Despite the fact that more and more companies are offering leaves to new fathers, very few men are taking them, Catalyst reported. "Follow-up discussions with human resources policy makers indicate that it is fairly common for fathers to take a few days off at the time of the child's birth, but they rarely request this time as a separate paternity leave. More often, men use their vacation days or arrange to take the time off informally as paid or unpaid personal days."

Catalyst offered several explanations for the apparently limited use of leave by fathers. If paternity leave is covered under the general leave-of-absence policy, some employees may not be aware of the leave option, said Catalyst. It is also possible that, although companies have paternity leave policies, the corporate climate does not encourage men to take advantage of them. In some companies, it is clearly considered inappropriate for men to request leave even though a policy exists.

Corporations take a far more negative view of unpaid leaves for men than they do unpaid leaves for women, according to Catalyst. Almost two-thirds of its survey respondents did not consider it reasonable for men to take any parental leave whatsover. Another quarter of the companies reporting thought it reasonable for men to take six weeks' leave or less.

Even among companies that currently offer unpaid leaves to men, many thought it unreasonable for men to take them, Catalyst added. Some 41 percent of such companies did not sanction their using the unpaid leave policy, and only 18 percent considered it reasonable for men to take leaves of three months or longer.

"These results may explain at least in part why men are not taking advantage of the leaves that policies offer," Catalyst said.

Leave for Infant Care

"Parental leaves begin where maternity leaves leave off," the Family Policy Panel of the Economic Policy Council of UNA-USA commented in a report released in January 1986. Parental leave is usually unpaid, allows new mothers and fathers to stay at home to care for their child or children, and permits the employee to return to his original job or to an equivalent position.

"Parental leaves begin where maternity leaves leave off."

Although even fewer companies offer these parental leaves than offer maternity leave, the EPC panel noted that parental leave is becoming an increasingly popular benefit. "Job-protected maternity and parental leaves enable a woman to have a child without losing her job, offer parents a period of adjustment after the birth of a child, and may help provide an infant a good start in life by allowing parents to choose the mode of care they prefer for their new infant. The child care function of parental leaves is very important, especially because of the expense of infant care and the very limited availability of quality infant care arrangements," the EPC panel said.

The EPC panel maintained that parental leave generally is not costly or difficult for an employer to implement.

Employer Opposition

The Congressional Research Service noted in its report that, "[s]ince the idea of parental benefits is relatively new in the United States, there is little documented opposition." CRS continued: "However employers might be expected to raise questions about the added costs of such a benefit, which might be passed on to consumers in the form of higher prices by private sector companies. Guaranteeing the job of an employee on long-term parental leave might also be more burdensome for small businesses, with their limited personnel resources, than for larger businesses. Finally, there is likely to be opposition on philosophical grounds to any form of Government involvement in child care or family development, however benign it might appear, due to the belief that such involvement is an unnecessary and undesirable interference in private, family matters."

When asked to name three chief concerns in considering parental leave policy options, Catalyst noted in its 1986 final report that human resources executives identified the following:

- handling the leave-taker's work;
- losing valuable employees if the company does not meet the needs of a changing work force; and
- the equity of granting leaves to new parents but not to other employees.

Concerns of lesser importance, Catalyst said, were obtaining high productivity in departments where employees work on part-time schedules, the possibility that employees would not return after leaves, and containing the cost of parental benefits.

The Chamber of Commerce's Position

Opponents of the proposed parental leave bill (H.R. 2020, Rep. Patricia Schroeder (D-Colo)) which was pending in 1985 in the House of Representatives, such as the U.S. Chamber of Commerce, have focused their criticism on the mandatory nature of the proposal. "It's a great benefit when employers and employees negotiate for it, but it's a question of making it mandatory," Jim Klein, manager of pension and employee benefits for the Chamber, told BNA.

Right now, Klein said, companies are spending 37 percent of their payroll on some form of employee benefit. "By injecting a new mandatory one, we could crowd out some other benefits serving a broader base of employees," he contended. Retirement, workers' compensation, and unemployment insurance coverage are the only benefits that currently are mandated, he said. To inject a new, mandatory one meeting a national social objective not on the same level only serves a narrow category of people at the expense of these broader-based benefits. In addition, requiring parental leave would place a particularly heavy burden on small companies, Klein said.

"[Parental leave is] a great benefit when employers and employees negotiate for it, but it's a question of making it mandatory."

Even if the United States is the only industrialized country which does not require the granting of parental leave, Klein said he doubted whether those countries putting a high value on parental leave compare as well to this country across the range of other benefits American workers enjoy. In its 1985 analysis of maternity and parental leave policies, however, the Congressional Research Service noted that, despite the dramatic increase in fringe benefits, "the relative level of U.S. fringe benefits still remains a smaller part of total compensation than it is in most other industrialized nations."

Klein acknowledged that worker interest in the benefit has grown significantly. "Employers may find that to stay competitive they will have to offer it more and more, and that's great. That's the marketplace responding as it should."

Klein applauded the growth in flexible or cafeteria benefit plans. If young employees want to take off time to care for children, they would have the choice of giving up some other benefit, such as a high retirement benefit, he said. "That's the kind of choice we ought to give employees, rather than the government getting in and saying all must provide this or that benefit," Klein added. (See Chapter VI, *Views of the Experts*, for additional comments by Klein on work and family.)

Precedents Being Set?

The problem of discrimination in relation to the granting of parental leave is dramatized by a recent legal proceeding in Chicago, Ill., and by a mediation board decision in Connecticut.

Under terms of a consent decree between Commonwealth Edison, a Chicago utility, and EEOC, the utility's male employees now have the same right as female workers to take unpaid personal leave to care for infant children (*EEOC v. Commonwealth Edison Co.*; USDC NIll, No. 85- C-5637, June 28, 1985). The decree resolved a suit filed on behalf of a male employee in which EEOC claimed that, by denying leave to the man but allowing non-disabled women to take leave following the birth of a child, Con Ed violated Title VII's ban on sex discrimination.

The leave provision at issue was contained in a collective bargaining contract between the International Brotherhood of Electrical Workers Local 1427 and the company. The provision stated that, "for justifiable reasons," a regular employee may be granted a leave of absence without pay, after reasonable notice to the company, and provided the employee's services can be spared. During the leave, seniority continues to be accumulated.

Under the provision, Commonwealth Edison had routinely granted women employees six months' unpaid leave to care for newborn children — and in one case, an adopted infant — after their normal, paid maternity leave had expired.

But when Stephen Ondera applied for permission to take six months' unpaid leave to care for his new baby, the company responded negatively.

Under the decree, the company agreed not to consider the sex of an employee "as a factor affecting the granting or denial of unpaid personal leave for care of an infant child during the first six months of its life."

In the Connecticut case, the state mediation board decided that Hartford City policemen whose wives have babies are entitled to paternity leave equivalent to the amount of maternity leave provided to female officers who give birth. The collective bargaining agreement at issue between the city and the International Brotherhood of Police Officers provided only for sick leave, not for maternity or paternity leave.

The State Board of Mediation and Arbitration said that when the city granted female officers maternity leave, it departed from the contract and relied on provisions of city personnel rules governing maternity/paternity leave for city employees to establish its policy for female officers. By failing to do the same for male officers, the city violated the "No Discrimination" clause of the union contract. The city appealed the ruling to the state superior court in Hartford.

A settlement of the legal dispute was reached between the city and union on Feb. 10, 1986. Under terms of the settlement, the City of Hartford will grant sick leave of up to eight work days following the birth of a legitimate child to male members of the police union. This leave will be charged to sick time. In the event that sick leave is exhausted, sick leave may be granted without pay. The leave must be taken on consecutive work days either immediately following birth or immediately following the baby's arrival home.

(*City of Hartford and International Brotherhood of Police Officers, Local 308*;

Conn. Dept. of Labor, State Board of Mediation and Arbitration, No. 8384-A-526, July 25, 1985)

Adoption

In the past decade, more and more companies have provided adoption benefits for their employees, according to the National Adoption Exchange (NAE), a Philadelphia-based organization which promotes adoption opportunities for children with special needs. Employees have begun to ask about the availability of adoption benefits, and employers have increasingly sought information on developing adoption benefit plans, said NAE.

An adoption benefits plan is a company-sponsored program that financially assists or reimburses employees for expenses related to the adoption of a child and/or provides for paid or unpaid leave for the adoptive parent employee. Adoption leave may be paid or unpaid and gives the adoptive parent time to help the child adjust after placement, according to NAE. Financial assistance may be a set allowance regardless of actual expenses or may be reimbursement for specific costs, NAE said. Some companies provide a combination of financial help and parental leave, NAE noted.

"For companies concerned with benefits cost containment, perhaps no other form of employee benefit offers the potential for high positive public exposure at such a low cost," NAE maintains.

Since 1980 there has been a notable increase in the number of companies offering adoption benefits, according to Catalyst. A 1984 Catalyst survey of the Fortune 1,500 companies showed that some 27.5 percent of the employers now offer such benefits, a significant increase over a 1980 Catalyst study which found that only 10.3 percent offered adoption benefits. Adoption benefits also were reported by Catalyst to be among the options under consideration by companies planning to alter their parental leave policies.

"For companies concerned with benefits cost containment, perhaps no other form of employee benefit offers the potential for high positive public exposure at such a low cost."

One-fourth of firms responding to the 1983 BNA Personnel Policies Forum survey reported they provided leave to employees adopting children. Of those firms with some leave policy, 77 percent offered time off without pay; limits on such leave ranged from two weeks to a year, with a median of six months. The remaining firms offered paid leave for adoptive parents, usually the personal leave the employee has accrued.

While leaves for adoption are generally unpaid, about one-third of companies that have adoption policies reimburse employees for adoption expenses, Catalyst said. The amount of reimbursement varied from $1,000 to no limit.

Most companies offering adoption benefits set 18 years as the maximum age of the child for whom benefits would be allowed, according to Catalyst. Nearly 12 percent of the Catalyst respondents limited benefits to those adopting infants or babies up to one year old.

Transportation, communications, and public utilities companies were most generous in offering adoption benefits, Catalyst found. Manufacturing, construction, and agricultural companies tended to be the least likely to grant adoption benefits to parents. Thirty-nine percent of larger companies and 31 percent of medium-sized companies offered adoption policies, while only 13 percent of smaller companies did so, Catalyst reported.

The absence of provisions for time off from work upon adoption of a child has become a major issue with adoption groups and has been the subject of some legal controversy. In a recent arbitration case involving a local government employee in Pennsylvania, the arbitrator held that maternity leave language in a collective bargaining agreement covered all employees who became mothers, not simply employees who became pregnant. There are no differences in the duties of natural and adoptive mothers, the arbitrator found, and the employer's maternity leave provisions should apply to an adoptive parent because the leave is principally for the purpose of establishing a relationship between parent and child, not for medical recovery from childbirth (*Ambridge Borough*, 81 LA 915).

State legislatures also are beginning to address adoption leave benefits. (See, for example, state law provisions in Minnesota and Maryland in Chapter V.)

A Policy Evolution Under Way

Maternity, paternity, infant care, and adoption leave policies are still evolving, according to Catalyst. In its 1986 final report on parental leave policies, Catalyst noted that more than half of the corporate respondents had changed their policies in the past five years, primarily in response to passage of the Pregnancy Discrimination Act of 1978.

According to Catalyst, because of the Pregnancy Discrimination Act, a number of employers changed the length of leave offered. There was some tendency among companies (34.8 percent) to increase the length of *paid* disability leave. Some companies (23.2 percent), however, appeared to have decreased the length of *unpaid* leaves. "Follow-up interviews with human resources administrators indicated that some employers who had had flexible, liberal responses to maternity leave requests changed their policies to offer only what was legally required," said Catalyst. Others, however, made their *unpaid* leaves longer (13.4 percent) and most (63.4 percent) have maintained the same amount of leave as before passage of the Act.

Other corporate policy modifications which may be at least indirectly attributable to the Pregnancy Discrimination Act, Catalyst added, include increased standardization and clarification of policy, and the more consistent application of existing policy.

New Policy Initiatives

Several "blue ribbon" panels that have studied the problems facing working parents are calling for national policy reform initiatives in the public and private sector on the issues of parental leave.

In January 1986, when it released the results of its two-year study of the extent of ongoing changes that are affecting the family, the workplace, and the economy, the Family Policy Panel of the Economic Policy Council of UNA-USA made the following recommendations:

- Federal legislation should be enacted requiring public and private employers to provide temporary disability insurance to all employees.
- Disability leave for all employees should be fully job protected. Consideration should be given to raising the wage-replacement ceiling and to extending the standard length of disability leave for pregnancy from the current six to eight weeks.

- Employers should consider providing an unpaid parenting leave to all parent-workers with their job or a comparable job guaranteed. This leave should extend until the child is six months old.

More than 100 countries, including almost every industrial country, have laws that protect pregnant workers and allow new mothers a job-protected leave at the time of childbirth with full or partial wage replacement, but the United States does not, the EPC panel noted.

Noting comments it received from Columbia University Professor Sheila B. Kamerman, the EPC panel pointed out that in the United States only 40 percent of working women are entitled to a leave from work for childbirth that includes even partial income replacement and a job guarantee "for the six to eight weeks most doctors say is minimally required for physical recovery." Even fewer parents are entitled to an additional unpaid but job-protected leave for the purpose of caring for a newborn or an adopted infant.

While some employers voluntarily provide temporary disability insurance, many do not, the EPC panel noted. The panel maintained that, since temporary disability insurance is a low-cost, contributory benefit, it would not be prohibitively expensive for most companies — even small ones.

At least five states — California, Hawaii, New Jersey, New York, and Rhode Island — have laws that require employers to provide temporary disability insurance. In its report, the EPC panel focused on New Jersey, where private employers are required to provide disability insurance. In that state, the panel said, both employers and employees contribute one-half of 1 percent of the employee's first $10,100 in annual earnings to the program. The panel noted that the New Jersey program is currently running a surplus, and added that pregnancy-related disability claims accounted for 13 percent of all the state claims in 1981, the number of weeks during which disability was received averaged 11, and the average benefit paid out was $108 per week.

Infant Care Problem Is 'Urgent'

Problems encountered by working parents in providing care for their infants have reached such a magnitude that they require "immediate national action." That's the conclusion of the Advisory Committee on Infant Care Leave at the Yale Bush Center in Child Development and Social Policy.

The committee — composed of leaders in health care, academia, government, business, and labor — recommended in late 1985 that the federal government institute a policy directing employers to allow leaves of absence "for a period of time sufficient to enable mothers to recover from pregnancy and childbirth and parents to care for their newborn or newly adopted infants." Such leave should provide "income replacement, benefit continuation and job protection," the panel said.

Problems encountered by working parents in providing care for their infants have reached such a magnitude that they require "immediate national action."

Infant care leave should be available for at least six months, with about 75 percent of salary paid for three months, the Yale committee suggested. Employers could set a "realistic maximum benefit, sufficient to assure adequate basic resources for the families who need them most," the panel said.

The cost of the plan would be about $1.5 billion a year, according to Edward Zigler, director of the Bush Center, who commented, "That figure is certainly not a break-the-bank figure."

The Yale group stressed that the United States is one of few industrialized nations that does not provide through federal law some protection for parents taking leave to care for infants. The group noted that the proportion of married mothers of infants who are in the U.S. labor force has risen from 24 percent in 1970 to 46.8 percent in 1984, and that 85 percent of working women are likely to become pregnant during their working lives.

"The majority of parents work because of economic necessity. The employed mother's salary is vital to the basic well-being of families," the Yale committee found. "A growing proportion of American families do not have the means to finance leaves of absence from work in order to care for their infants."

Under the parental leave bill pending in the House of Representatives, employers would be required to provide at least 18 weeks of leave within a two-year period for employees of either sex who choose to stay home to care for a newborn, newly adopted or seriously ill child. (For a discussion of the bill, which does not require wage replacement, see Chapter V. For text of the bill, see the Appendix. Dr. T Berry Brazelton, Associate Professor of Pediatrics at Harvard Medical School, also discusses the legislation in a BNA interview in the Appendix.)

Insurance Fund Recommended

The most efficient method for financing parental care leave would be through a federally mandated insurance fund financed by contributions from employers and employees to cover "both short-term disability and infant care leave," the Yale report said. Options could include a federally managed insurance fund, state managed funds, or employer selection of private insurance to fund such leaves.

Until a national infant care policy can be adopted, employers should assist their employees with their own leave programs, something many firms already have done, the Yale group said. In addition to leave policies, employers can implement policies such as flexible work schedules, reduced work hours, job sharing, and child care information and referral services, it said.

Catalyst Recommendations

In its final report, Catalyst recommended adoption of the following policies by corporations:

- Disability leave with full or partial salary reimbursement.
- Additional unpaid parental leave of one to three months.
- A transition period of part-time work for one month to one year for returning leave-takers.
- Reinstatement to the same job or a comparable job at all stages of the leave.
- Parental leave policy should be explicitly communicated in writing, clearly identifiable, and distributed to all employees.

"These recommendations enable an employer to strike an effective balance between the priorities of a company and those of its employees. From the company's standpoint, the total policy is adequate but not excessive, particularly when a part-time transition period is utilized as an alternative to a lengthier (six months or more) unpaid leave," Catalyst said.

"From the employer's perspective, the policy takes the leave-taker's career commitment seriously. It allows a reasonable amount of time for physical recovery and adjustment to a new role, but does not encourage a leave length that works against employees' professional goals," Catalyst concluded.

MATERNITY AND PARENTING LEAVE

Organization: **Foley, Hoag & Eliot**
Boston, Mass.

Summary: **Foley, Hoag & Eliot provides eight weeks of paid leave for any attorney unable to work because of pregnancy, childbirth, or other conditions related to pregnancy. Beyond the eighth week, the firm continues to pay an attorney's full salary should she be certified by her physician as unable to work. The firm also provides unpaid parenting leave to male or female attorneys.**

Foley, Hoag & Eliot, a well-known Boston law firm, has, over the past few years, instituted maternity and parenting leave policies which one partner describes as "very flexible." Barry White, who sits on the managing committee responsible for personnel policy, reported that the firm formalized its leave policies in 1985. According to White, no one has expressed any dissatisfaction with the policy — either before or since it's been formalized — and at least one of the firm's attorneys called it "very generous."

While there is some room for negotiation on the policy, the firm basically provides eight weeks of paid leave for any attorney unable to work because of pregnancy, childbirth, or other conditions related to pregnancy. (While Massachusetts law stipulates that eight weeks be granted for disability leave for pregnancy, it leaves to the employer the decision whether this leave is paid or unpaid.) Beyond the eighth week, White explained, the firm continues to pay an attorney's full salary should she be certified by her physician as unable to work.

The firm, in addition, provides unpaid parenting leave to male or female attorneys. For women, it is normally an extension — for up to ten months — of maternity leave. For men, it is a distinct period of leave, lasting up to ten months. White reported that "a couple of male attorneys" have taken parenting leave, one for several months.

Absence longer than ten months is treated as resignation and one full year must intervene between successive maternity leaves or parental leave periods, White told BNA. The firm assumes, he said, that its attorneys are primarily interested in pursuing a law career, not full-time parenting. There is no minimum period of employment before an attorney is eligible for maternity or parenting leave, he said.

Asked how leave absences affect one's career progression at the firm, White replied that, in terms of promotion and benefits, a leave of up to six months is not considered a material break in service. During maternity leaves, and any parenting leave up to four additional months, all insurance coverage remains in effect, he noted.

Dinah Seiver, an attorney who was granted a four-month paid maternity leave in 1980, confirmed White's claim, saying she did not believe using maternity or parenting leave in any way interfered with career progression at Foley, Hoag &

Eliot. Her own leave, which preceded formalization of the firm's policy, was "individually negotiated," she pointed out.

Seiver said it was the "first case" of an associate taking maternity leave in recent years. "Following quickly on my heels," she added, were a few other attorneys who requested maternity leave. It was this experience that prompted the firm to formalize its policy. As Seiver suggested, "It would have been burdensome and unfair for each of us to negotiate separately."

Part-time Scheduling

The firm also allows a part-time work schedule to facilitate a parent's return to work after leave. Typical, according to White, is a four-day-a-week schedule. However, a few attorneys have eased back into their professional duties with a three-day schedule.

Seiver contended that liberal maternity and parenting leave policies benefit not only the employee, but the employer. "It's imperative for productivity in the workplace and for general morale that employers be conscientious in setting maternity/paternity leave policy," she said. "I think employers should be aware that a generous policy will redound to their benefit. My employer was very generous and I think that other employers would do well to do the same," Seiver said.

Women's Bar Association Survey

In terms of flexibility and what Seiver called "generosity," Foley, Hoag & Eliot performed better than most legal employers surveyed in 1982 by the Women's Bar Association of Massachusetts. The firm was one of seven granting paid maternity leave of eight weeks or longer; one of two granting unpaid leave to a year; one of four private law firms with a part-time employment policy; and one of the three with any paternity leave policy. The survey covered 26 legal employers in Massachusetts.

Foley, Hoag & Eliot has 53 partners and 48 associates in its Boston office, White said. Six partners are female, as are 16 associates, and all the female attorneys are of child-bearing age.

A less liberal leave policy applies to non-professional staff.

PARENTAL LEAVE

Organization: **Bank Street College of Education**
New York City

Summary: **Bank Street permits up to three months of paid leave for workers who are the primary caregivers for new children and other children in a family. Employees who adopt children younger than 36 months old are eligible for the same amount of leave. In addition to the paid leave, unpaid leave of six months to a year is available, depending on an employee's particular work situation. Initially, the parental leave policy applied only to professional workers at Bank Street, but on Jan. 1, 1986, the provisions were**

extended to the college's service employees, who are represented by AFSCME Local 1707.

Bank Street College of Education in 1980 adopted a policy of providing parental leave for fathers and mothers on an equal basis.

The policy permits up to three months of paid leave for those employees "committed as the principal or co-principal caregiver of the new child and other children in the family, providing at least 50 percent of the parental caregiving time." To be eligible, employees must have worked for Bank Street for at least a year, and need only work more than half-time to be eligible for the leave.

Employees who adopt children younger than 36 months old are eligible for the same amount of leave. Bank Street also allows a month's paid leave for employees who adopt children of between three and 12 years old, and for biological parents who are not "primary caregivers."

In addition to the paid leave, unpaid leave of six months to a year is available, depending on an employee's particular work situation.

A Commitment to Continued Employment

"Conditions for continued employment for those who take family leave," the policy states, "are the same as all other employees. The college is committed to continue employment subject to available funds and satisfactory performance. It expects staff to make a commitment in return."

When originally enacted, the parental leave policy applied only to professional workers at Bank Street. But on Jan. 1, 1986, Bank Street Personnel Director Florence Gerstenhaver said, the provisions were extended to the college's service employees, who are represented by the Community and Social Agency Employees, AFSCME Local 1707. Bank Street employees about 300 people.

That Bank Street provides parental leave for employees is not surprising since it states that "its business is children and families." Founded in 1916, Bank Street College trains teachers, counselors, and school administrators, conducts research on teaching and learning, and produces classroom materials, books, and television programs for and about children and parents. Among the projects now under way at the college are:

- A study of work and family life in several nations that measures the productivity of workers in relation to the quality of their home life;
- A cable television series on parenting, titled "Family Matters";
- A project to help fathers become more active in raising children;

- Consultation by a team of specialists on the design of a model children's center in a U.S. industrial park;
- A series of books on parenting;
- A study of sibling relationships; and
- Research on how microcomputers influence children's learning.

One Father's View

Personnel Director Gerstenhaver noted that "not a lot" of fathers have taken advantage of paternity leave. A talk with Dr. Bret Halverson, one new father taking advantage of Bank Street's paid paternity leave, might be an incentive for more to do so, however.

Rather than leaving work entirely for three months, Halverson has opted to take every Friday off for 15 months. He directs Jobs for the Future, a Bank Street youth employment project, and says that, if he left the scene entirely for three months, "I wouldn't have a project left."

Halverson feels that the extra day at home substantially affects his relationship with his son, Paul. "I'm not just flitting in and flitting out," he says. He also says his Fridays off have "given me a fascinating look into what life is like for somebody who stays home. I have gained a lot of empathy for, and appreciation of, the role of the mother. A lot of those responsibilities aren't so fun; there's a lot more excitement, at least in certain ways, in being the breadwinner."

Halverson says he is not doing any less work in four days than he used to do in five. "I've gotten more efficient in some ways, and I also take work home."

Halverson is 37, and Paul, born in July 1985, is his first child. Halverson's wife Cecilia took three months' unpaid leave from her job at the City University of New York, returning to work in October. Aside from the financial imperative of Cecilia returning to work, she "felt the need to," Halverson explains.

Halverson began to take his Fridays off in September 1985 and will continue doing so through December 1986. Monday through Thursday, the couple hires a baby-sitter at the cost of $4 per hour. Halverson says, "I've been fortunate on two counts: I have an employer with a progressive outlook, and both my wife and I make reasonable incomes."

Other Fathers 'Envious'

In the suburban community of Nanuet, N.Y., where he and his wife live, Halverson says, there is "an epidemic" of babies among two-career couples in their thirties. Other fathers, he contends, are "very envious" of his ability to take paternity leave. "You hear a lot about the superwoman," Halverson says, "but there's a lot of pressure now to be superdads, and people get into that without really knowing what's involved."

Halverson feels that the equal sharing of child care duties by mother and father — a goal he sees as desirable — "is more likely to happen if there are incentives from employers." He adds that these incentives are "more important the further down a person is in the hierarchy" because higher-level employees naturally tend to have more flexibility about when they are physically in the office. He adds: "Employers need to understand that, if they are well organized and flexible enough, leave[s] can be a very productive thing."

"In an ideal situation," Halverson says, "I think I would enjoy staying home full time for a while. It would be good for Paul, although it would be hard for me. Your adrenaline doesn't get pumping a lot when you're at home, and that's one of the reasons I enjoy working."

Summing up what the first six months of fatherhood have taught him, Halverson said, "It's that what you put in with a child is what you get out. Paul's a happy kid because whoever's with him is able to spend a lot of time."

PARENTAL LEAVE

Organization: **Lotus Development Corp.**
Cambridge, Mass.

Summary: **Lotus Development provides up to four weeks of parenting leave for its employees who are biological or adoptive parents. The leave, which may be supplemented by vacation leave, may be taken at any time, but employees must negotiate with department managers on whether leave is possible, and on the length of leave.**

A parenting leave policy at Lotus Development Corp., a computer software company, has turned out to be "very popular," Janet Axelrod, vice president for human resources, told BNA. The policy, which is formalized in the employee manual, provides for up to four weeks of paid leave, primarily, the manual states, for "parenting and bonding," she said.

In the manual, Lotus, which has a fairly young work force, acknowledges its employees' concern about the impact parental responsibilities may have on their careers. The parenting leave program is available to the primary caregiver, whether mother or father, and to parents who adopt children, Axelrod said. Parenting leave is distinct from any disability leave for childbirth, she added, and is not restricted to caring for newborns, but can be taken at any time there is a need to be with a child for awhile.

Parenting leave is available to employees who work 28 or more hours per week and who have been with Lotus for at least a year, Axelrod said. The leave accrues at the rate of two and a half days per month beginning on the employee's first anniversary. The limit is 20 days, Axelrod said. Vacation time can be added to it, if necessary or desired, she said.

Details of parenting leave, Axelrod said, must be worked out in advance with the employee's manager to make sure the department can function without the employee.

In addition to parenting leave and using vacation days, Lotus employees may be able to take an additional four-week unpaid leave of absence or arrange for a flexible work schedule for up to three months. A flexible work schedule may consist of fewer hours or days per week, work at home, or longer hours and fewer days per week.

Lotus guarantees employees their jobs upon return to work; for those returning from an unpaid leave of absence, "Lotus will use its best efforts to find the employee a comparable job at the end of leave," according to the manual.

A Commitment to Employees

Lotus stresses in the manual that its progressive benefits package is a sign of its commitment to its employees and that it expects in return certain commitments from employees who use parenting leave: that they will discuss in advance and agree on leave arrangements with their managers; that they will provide timely notification of any changes in the arrangements; and that they will return to work following parenting leave. As a way of encouraging employees to return to work after parenting leave, Lotus does not pay employees for the leave until they have been back at work for four weeks. Those employees who find they are not able to return are asked to return on a temporary basis until a replacement can be found, Axelrod said.

Chris Bresnahan, a human resources specialist at Lotus who used the parenting leave after the birth of her first child in July 1985, said, "It was great." She said it gave the baby a chance to "get settled" and on a daily schedule before she returned to work.

When she came back to Lotus, Bresnahan said, she had five and a half weeks of vacation time accrued, so she arranged to return on a four-day schedule, giving herself a relaxed day with the baby on Monday. Bresnahan said she knew one Lotus employee who used the parenting leave to come back to work half-time for two months after the birth of her child.

In developing the plan, Axelrod said Lotus investigated every policy on parenting leave it could, but concluded it wanted to do more than any of the policies examined. She added that she didn't know of any other companies that were following Lotus' lead, but she characterized parenting leave as "the wave of the future." Axelrod said that, in her opinion, employers don't have any choice but to offer parenting leave if they want to run their companies and have women working for them.

ADOPTION ASSISTANCE

Organization: **Bank of America**
San Francisco, Calif.

Summary: **Since 1983, Bank of America has provided reimbursement for adoption expenses of more than $250 and up to $2,000 to employees adopting foster children or stepchildren and children from overseas.**

Since 1983, Bank of America has eased the burden of adoption by providing financial aid to salaried employees who have decided to legally adopt a child.

"I feel strongly that if we pay maternity benefits, we should offer an alternative to those who want to adopt children," Bob Beck, executive vice president of corporate human resources, stated in a company newsletter. He added that the adoption assistance program follows the bank's concept of offering employees "as many alternatives as possible in their benefits package."

After an employee pays the first $250 in covered adoption expenses, the plan reimburses up to $2,000 of remaining expenses. Covered expenses include agency placement fees, court costs and legal fees, temporary foster child care, and maternity benefits not covered by the natural mother's insurance.

Assistance is available for adoptions arranged by both public and private agencies, and by private sources such as attorneys and physicians.

Nancy Bronstein, who monitors the adoption assistance plan, said that about one-half of the bank's employees who apply for adoption assistance go through public agencies, where fees can run up to $1,500. The rest of the employees use lawyers, whose expenses run between $5,000 and $10,000, which includes about $1,500 for the natural mother's medical expenses and the balance in legal fees.

Bronstein said the firm is responsible only for adoption reimbursement, "not for helping to locate babies." Finding the right agency or private source is up to the individual, she stressed.

Bank of America's adoption assistance plan also covers adoption of foster children or stepchildren and children from overseas. Adopted children must be under age 17 for an employee to receive assistance.

Through 1985, according to Bronstein, 40 employees have applied for and received adoption assistance. All but one were for newborns; one case involved a foster child. Three children were from foreign countries and one adoptive mother flew to Argentina to pick up the child.

Employees are eligible for the adoption assistance as long as the adoption is legalized after the employee has completed 90 days of salaried service, Bronstein said.

Bronstein explained that responses to a Bank of America survey of other employers on the issue of when employees become eligible for the plan are split evenly, with about half providing assistance upon legalization of the adoption and the other half making assistance available prior to actual legalization.

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